TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 336

LAKE SUPERIOR CONSOLIDATED IRON MINES, OLIVER IRON MINING COMPANY, NORTHERN DEVELOPMENT COMPANY, ET AL., APPELLANTS,

vs.

SAMUEL LORD, J. G. ARMSON, AND ODIN HALDEN, CONSTITUTING THE MINNESOTA TAX COMMISSION, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

FILED MARCH 30, 1925

(30,980)

(30,990)

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FIFTH DIVISION**

LAKE SUPERIOR CONSOLIDATED IRON MINES, a Corporation; OLIVER Iron Mining Company, a Corporation; Northern Development Company, a Corporation; Bishop Iron Company, a Corporation; Elba Iron Company, a Corporation, and Luzerne Iron Mining Company, a Corporation, Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; R. P. Chase, Auditor of Minnesota, and Henry Rines, Treasurer of Minnesota, Defendants.

AMENDED BILL OF COMPLAINT—Filed April 2, 1924

The above named plaintiffs, for their amended bill of complaint and for their cause of action against the above named defendants, allege and show to the Court as follows:

1. That the defendants Samuel Lord, J. G. Armson and Odin Halden constitute the Minnesota Tax Commission of the State of Minnesota; that said Odin Halden is a resident and citizen of the County of St. Louis, defendant Samuel Lord is a resident and citizen of Dodge County, defendant J. G. Armson is a resident and citizen of Washington County, all of Minnesota, and defendants Clifford L. Hilton, R. P. Chase and Henry Rines are, respectively, Attorney General, Auditor and Treasurer of the State of Minnesota and are all resi-[fol. 3] dents and citizens thereof.

2. That the plaintiff Lake Superior Consolidated Iron Mines is and for more than thirty (30) years last past has been a corporation duly organized and existing under the laws of the State of New Jersey and qualified to do business in the State of Minnesota; that the plaintiffs Oliver Iron Mining Company, Bishop Iron Company and Elba Iron Company are and for more than twenty-eight (28) years last past have been corporations duly organized and existing under the laws of the State of Minnesota; that the plaintiff Northern Development Company is and for more than twenty-five (25) years last past has been a corporation duly organized and existing under the laws of the State of West Virginia and qualified to do business in the State of Minnesota; that the plaintiff Luzerne Iron Mining Company is and for more than thirteen (13) years last past has been a corporation duly organized and existing under the laws of the State of Minnesota; that all of said corporations were organized for the purpose of engaging in the business of mining and of conducting mining operations.

3. That at the 1923 session thereof, the Legislature of the State of Minnesota passed Chapter 226 of the Session Laws of that year, which was approved by the Governor, and a copy of which is hereto attached, marked "Exhibit A."

4. That pursuant to said statute the defendants Samuel Lord, J. G. Armson and Odin Halden, constituting said Minnesota Tax Commission, have threatened to enforce the same and are taking measures to require reports thereunder and demanding that the plaintiffs herein pay taxes upon the royalties which have been received or may [fol. 4] be received by plaintiffs during the year 1923, in accordance with the provisions of said statute; that said defendants Lord, Armson and Halden, constituting said Minnesota Tax Commission, are demanding of plaintiffs that they file the report specified in Section 3 of said statute, and are threatening to assess the tax hereinafter mentioned against plaintiffs and their respective property interests and to certify such taxes and penalties in accordance with the provisions of said statute, so as to cause the same to become a lien upon the respective property interests of plaintiffs as hereinafter set forth, and so cast a cloud upon the respective titles of plaintiffs; that the taxes which plaintiffs would be thus required to pay would be a lien upon their respective real estate property interests in Minnesota and a cloud upon the same if the said statute is valid and constitutional; that plaintiffs allege upon information and belief, that said defendants propose to cause suits to be brought against the respective property interest of plaintiffs and possibly separate suits against each of these plaintiffs as to each one of their mining properties on account of the interest of each of plaintiffs therein so as to obtain a separate lien as against the interest of each plaintiff, in each such mine for the amount of royalties received therefrom, causing a multiplicity of vexatious suits, and so interfere with the property rights and privileges of plaintiffs, unless restrained by the Court.

5. That this is a suit in equity arising under the Constitution of [fol. 5] the United States in that the plaintiffs seek to enjoin the defendants from acting under or in pursuance of or in any way carrying out or enforcing the provisions of said Chapter 226 of the Laws of Minnesota for 1923, upon the ground that said statute and any and all acts done or attempted to be done thereunder by said defendants are and would be in violation of the Constitution of the United States, as well as of the Constitution of the State of Minnesota, in the particulars hereinafter set forth. That the amount of taxes which said defendants threaten to levy and collect for the year 1923 against the plaintiffs would be upwards of Fifty Thousand Dollars ($50,000.00), exclusive of interest, costs and penalties, and the amount of the tax under said statute which said defendants would attempt to levy against said plaintiffs for each successive year during the whole life of the leases which are on the plaintiffs' properties, the unexpired terms of which are of varying lengths, that is, from five (5) to forty-five (45) years, will be upwards of Three Thousand Dollars ($3,000.00), and will amount to many thousands of dollars.

6. That said plaintiff Lake Superior Consolidated Iron Mines is the owner of a certain mineral leasehold interest in and to certain real estate situate in St. Louis County, Minnesota, known as the Biwabik mine; that Biwabik Mining Company is the owner by assignment of a mineral sub-lease covering said Biwabik mine from and by virtue of which sublease said plaintiff Lake Superior Consolidated Iron Mines during the year 1923 received certain royalties; that said plaintiff Lake Superior Consolidated Iron Mines is also the [fol. 6] owner of a State Mineral Contract in and to certain real property in St. Louis County, Minnesota, known as the Misabe Mountain mine; that the Neville Iron Mining Company, a Minnesota corporation, is the owner by assignment of a mineral sublease upon said Misabe Mountain mine from and by virtue of which sublease said plaintiff Lake Superior Consolidated Iron Mines during the year 1923 also received certain royalties;

That said plaintiff Oliver Iron Mining Company is the owner of an undivided 1/10 interest in the fee of certain real property situate in said St. Louis County, known as the Zenith mine, which mine is under mineral lease by assignment to Vermillion Mining Company, a Minnesota corporation, from and by virtue of which lease said plaintiff Oliver Iron Mining Company during the year 1923 received certain royalties;

That said plaintiff Northern Development Company is the owner of the fee of certain real property situate in said St. Louis County, known as the Victoria mine, which is under mineral lease to Auburn Iron Company, a Minnesota corporation, from and by virtue of which lease said plaintiff Northern Development Company during the year 1923 received certain royalties;

That said plaintiff Bishop Iron Company is the owner of an undivided 87/100 interest in the fee of certain real property situate in Lake County, Minnesota, known as part of the Section 30 mine, which is under mineral lease to Section 30 Mine, Inc., a Minnesota [fol. 7] corporation, from and by virtue of which lease said plaintiff Bishop Iron Company during the year 1923 received certain royalties;

That said plaintiff Elba Iron Company is the owner of the fee of certain real property situate in St. Louis County, Minnesota, known as the Elba mine, which is under mineral lease to Hobart Iron Company, a Minnesota corporation, from and by virtue of which lease said plaintiff Elba Iron Company during the year 1923 received certain royalties;

That said plaintiff Luzerne Iron Mining Company is the owner of the fee of certain undeveloped real property situate in St. Louis County, Minnesota, known as a part of the Donora mine; that said Donora mine is under mineral lease to Donora Mining Company, a Minnesota corporation, from and by virtue of which lease said plaintiff Luzerne Iron Mining Company during the year 1923 received certain royalties; that said plaintiff Luzerne Iron Mining Company is also the owner of an undivided 59/60 interest in the fee of certain other real property in St. Louis County, Minnesota, known as the Tener mine, which is under lease to said plaintiff Oliver Iron Mining

Company, from and by virtue of which lease said plaintiff Luzerne Iron Mining Company during the year 1923 received certain royalties;

That for said interests in fee the plaintiffs above named paid substantial considerations in money;

That the tax which defendants threaten and propose to levy against the royalties above referred to under and pursuant to said statute would be in excess of the sum of Fifty Thousand Dollars ($50,000.00).

[fol. 8] 7. That under the statutes of the State of Minnesota all real property is valued for ad valorem taxation purposes and the taxes are assessed as of such value on the first of May of any given year, and likewise all personal property and money and credits are valued and assessed for ad valorem taxes as of the first of May of any given year. That under said statutes the respective fee interests of plaintiffs in the iron ore in said real estate is valued for taxation purposes at fifty per cent (50%) of its true and full value, which is higher than the valuation for taxation purposes of any other class of property whatsoever in the State of Minnesota; that the surface of said fee interests is valued for taxation puposes under said statutes at forty per cent (40%) of its true and full value where it is urban property and thirty-three and one-third per cent (33⅓%) where it is not urban property; that under said statutes moneys and credits of plaintiffs are taxed, as are moneys and credits of all residents and corporations throughout the State, at three mills on the dollar of the actual value thereof, and that other personal property throughout the State is assessed and taxed at forty per cent (40%) of its true and full value, except as to household goods, agricultural products and stocks of merchandise, which are valued at a somewhat lower rate, all as provided in Chapter 140 of the Session Laws of 1923, being an amendment of Section 1988 of the General Statutes of 1913; that at least a portion of the royalties received by these plaintiffs during the year 1923 are taxed for said year under said General Statutes.

[fol. 9] 8. That the said statute, in case the tax leviable thereunder is not paid as therein specified, requires an action to be brought by the State District Court of Ramsey County, Minnesota, for the amount thereof and interest and costs. It provides for a penalty of ten per cent (10%) as against this plaintiff for failure to make a report as required by Section 3 of the Act, and an additional penalty of ten per cent (10%) in case such tax is not paid by the first of June following the year for which it was levied, and for interest at the rate of one per cent (1%) per month commencing thirty (30) days after the same falls due and interest at a like rate in case judgment therefor shall be obtained. It provides that the tax shall be due as of the first of June and shall from thenceforth be a specific lien upon plaintiffs' interests in and to the land from which the ore may be mined. But said statute gives no right of contest to test the validity of said tax prior to the imposition of the two ten per cent (10%) penalties and one per cent (1%) per month interest in

addition, up to the time the Attorney General, in behalf of the State, may choose to commence a suit and until the determination of such suit.

9. That if the plaintiffs should pay such tax they could not maintain a suit in the Federal or State Courts to recover it, without the consent of the State of Minnesota, as the State cannot be sued without its consent, and no such consent has been or will be given. That there is, therefore, no adequate remedy at law in the Federal Court, and plaintiffs having none such are entitled to equitable relief in the Federal Court.

[fol. 10] 10. That this suit and the restraining order and injunction applied for herein are in good faith and upon proper and reasonable grounds of contest as to the constitutionality and validity of said State statute, and plaintiffs are entitled to the protection of this Court as against the imposition of such penalties and interest, as the imposition of the same would be inequitable and unjust even though the statute should be held valid.

11. That the leases and subleases above referred to under and by which the royalties above mentioned become payable to plaintiffs were made at various times prior hereto, some of them being made many years ago, and all of said leases and subleases still have several years to run. That under the said statute the State is not required to bring an action within any certain time and might not bring such action for years, and yet the tax provided for in said statute would become a lien upon the right, title, interest and estate in said lands owned by these plaintiffs according to said statute as early as the first of June, 1924, and constitute a cloud thereon from said date and in fact does now constitute a cloud upon the said titles of these plaintiffs, in that it is provided that said tax shall be a specific lien upon the interests of those plaintiffs in the lands on account of which the royalty is paid and the tax levied.

12. That the royalties received by said plaintiffs Lake Superior Consolidated Iron Mines and Northern Development Company, which are foreign corporations, are, and during the year 1923 were, [fol. 11] received by them in the State of New York at their respective offices or the office of their fiscal agent, and have no situs within the State of Minnesota for the purpose of taxation and are not subject to the tax imposed by said Act.

13. That said Act is in violation of the Constitution of the United States and of the Constitution of the State of Minnesota and is, therefore, void in that it violates the provisions of the Fourteenth Amendment to the Constitution of the United States providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and, further, in that it violates Sec-

tion 1 of Article 9 of the Constitution of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

14. That if said tax is held to be a tax upon the sale price or proceeds of said mineral lands or of the iron ore therein by reason of said royalties being the equivalent thereof, said statute operates unequally against these plaintiffs in that no corresponding tax under said statute or under any other Act is imposed upon the proceeds of the sale of mineral lands or of ore therein or of other lands or property, that there have been many instances and in 1923 were instances in which fee owners operated their own property and sold the ore produced and in which lessees operated properties leased by [fol. 12] them and sold the ore produced, and in which lessors of mineral lands and also lessees sold and conveyed their interest in the premises and in the ore therein; that by reason of said fact said statute violates the Fourteenth Amendment of the Constitution of the United States in that it denies to the plaintiffs the equal protection of the laws, and Section 1 of Article 9 of the Constitution of the State of Minnesota requiring that all taxes shall be uniform upon the same class of subjects.

15. That if said tax is held to be a tax upon the rents and profits derived from said lands, then said statute operates unequally against the plaintiffs in that no corresponding tax is imposed by said Act or any other act upon the rents and profits from lands other than mineral lands nor upon the rents and profits of mineral lands, except when the same accrue to the owner thereof in the form of royalties, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article 9 of the Constitution of the State of Minnesota.

16. That if said tax is held to be in effect a tax upon land by reason of being a tax upon the rents and profits derived therefrom, then said statute operates unequally against the plaintiffs in that it selects only the rents and profits derived from mineral land in the form of royalties and in that no corresponding tax is imposed by said Act or any other act upon lands other than mineral lands or upon the rents and profits therefrom; or upon mineral lands or the [fol. 13] income therefrom except when the income from said mineral lands accrues to the owner thereof in the form of royalties; all in violation of the Fourteenth Amendment of the Constitution of the United States and of Section 1 of Article 9 of the Constitution of the State of Minnesota.

17. That if said tax is held to be an income tax by reason of said royalties being income received from said lands, then the said statute operates unequally against the plaintiffs herein in that no corresponding tax is imposed by said Act or any other act upon income from any other property or source whatsoever, including income derived from mineral lands other than in the form of said royalties, all in violation of the Fourteenth Amendment of the Constitution

of the United States and Section 1 of Article 9 of the Constitution of the State of Minnesota.

18. That if said tax is held to be a tax upon moneys received by said plaintiffs as royalties, then said statute operates unequally against the plaintiffs in that no corresponding tax is imposed by said Act or any other act upon moneys which have been derived from other sources, whether by way of income or conversion of other property or in any manner whatsoever; that all of the royalties received by the plaintiffs herein are received by them in the form of moneys or credits; that such attempted classification of moneys or credits according to the source from which it is derived is unreasonable and invalid, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article 9 of the Constitution of the State of Minnesota.

[fol. 14] Wherefore, plaintiffs pray this Honorable Court for judgment and decree against the defendants, and each of them, as follows:

1. That the said Chapter 226 of the Laws of 1923, being entitled "An act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explore, mine, take out and remove ore from the same", be adjudged unconstitutional, invalid and void.

2. That this Court grant to the plaintiffs against the defendants, and each of them, individually and in their representative capacities as officers of the State of Minnesota, a temporary restraining order, to be replaced by an interlocutory injunction to be granted by an enlarged court of three Judges pursuant to Section 266 of the Judicial Code of the United States, and that upon a final hearing to be succeeded in turn by a permanent injunction restraining and enjoining such defendants from acting under and in pursuance of, or from in any way carrying out or enforcing the provisions of said Chapter 226 of the Laws of Minnesota of 1923 against plaintiffs.

3. That the Court grant plaintiffs such other and further relief as to the Court shall seem just and proper.

C. A. Severance, George W. Morgan, Solicitors for Plaintiffs.
Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of counsel.

[fol. 15] Sworn to by W. W. Watson, Jr. Jurat omitted in printing.

[fols. 16 & 17] EXHIBIT "A" TO BILL OF COMPLAINT

Chapter 226—H. F. No. 29

An act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explore, mine, take out and remove ore from the same.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Tax on iron ore royalties—Rate.—There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this state, a tax of six (6) per cent.

Sec. 2. Definitions.—For all purposes of this act the word "royalty" shall be construed to mean the amount in money or value of property received by any person having any right, title or interest in or to any tract of land in this state for permission to explore, mine, take out and remove ore therefrom; and the word "person" shall be construed to include individuals, copartnerships, associations, companies and corporations.

Sec. 3. Annual Reports to Tax Commission.—Every person to whom royalty is paid shall on or before the first day of February, 1924, and annually thereafter on or before the first day of February of each year, make and file with the Minnesota Tax Commission a report verified by the person making the same and setting forth the amount of royalty received by such person during the preceding calender year, and such other information as said commission may require.

Sec. 4. Contents of Reports.—It shall be the duty of every person paying royalty, on or before the first day of February, 1924, and annually thereafter on the first day of February in each year, to make and file with the Minnesota Tax Commission, a report covering the preceding calendar year, verified by the oath of the person making the same and setting forth:

1. The number of tons mined from each tract of land for the right to mine and remove ore on which such person pays royalty.

2. The amount of royalty paid on each tract of land separately.

3. The name and post office address of each person to whom royalty is paid, and

4. Such other information as said commission may require.

Sec. 5. Tax Commission to Assess Tax.—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 3 of this act it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if

found correct, said tax commission shall determine therefrom the amount of tax due from such person, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

A person subletting land for the use of which he received royalty shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received.

Sec. 6. Penalties for Non-payment.—If any person subject to the tax provided by this act shall fail to make the report provided for in Section 3 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the ores mined or produced, together with the royalty paid thereon and shall fix the tax due thereon from such person, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such royalty. Such findings shall stand in the place of the report required by this act to be made by such person and shall be in all courts of the state, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. Date of Payment.—Such tax shall be due and payable on the first day of June, 1924, and annually thereafter on the first day of June, and if not paid on or before that date a penalty of ten (10) per cent shall immediately accrue thereon.

Sec. 8. Tax a Lien on Lands and Ore.—The situs of royalty for all purposes of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the same is due and payable upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid.

Sec. 9. Auditor to Make Draft.—On or before the tenth day of June in each year the state auditor shall make his draft upon each person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 10. Treasurer to Collect Tax.—The state treasurer within ten days after the receipt of the draft mentioned in Section 9 of this act shall notify by mail the taxpayer designated therein of the amount thereof and if not paid within thirty days after presentation shall deliver the same to the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey County for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one per cent per month and the said property may be sold in satisfaction of such judgment in the same manner as provided by law for the sale of property upon execution.

Sec. 11. Penalties for False Returns.—Any person who for the purpose of evading the payment of the tax herein provided or any part thereof makes any false return or report shall in addition to the tax provided by this act pay a penalty of fifty (50) per cent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act shall be guilty of perjury and upon conviction thereof shall be punished therefor as provided by law.

Sec. 12. Records to be Open to Inspection of Tax Commission—Violations and Penalties.—All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person paying or receiving royalty on ore mined in this state, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any such person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. Taxes to be Paid into General Revenue Fund.—All taxes assessed, levied and collected under the provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 11, 1923.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE BILL OF COMPLAINT—Filed March 31, 1924

It is stipulated and agreed by and between the parties hereto and their respective solicitors that the attached amended bill of complaint may be filed as and for the amended bill of complaint of the plaintiffs herein, and that an order of the court to that effect may be made.

Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants. C. A. Severance, George W. Morgan, Solicitors for Plaintiffs.

[fol. 19] IN UNITED STATES DISTRICT COURT

ORDER TO FILE AMENDED COMPLAINT—Filed April 2, 1924

Upon stipulation of the parties, it is hereby ordered that the foregoing amended bill of complaint may be filed as the amended bill of complaint of the plaintiffs herein.

Wm. A. Cant, Judge of United States District Court.

Dated April 1, 1924.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDED BILL OF COMPLAINT—Filed April 5, 1924

The above named defendants for their joint and several answers to the amended bill of complaint of the plaintiffs in the above entitled cause respectfully represent and state to the court as follows:

I

Defendants admit the allegations of paragraph 1 of the amended bill of complaint.

II

Defendants admit the allegations of paragraph 2 of the amended bill of complaint.

III

Defendants admit the allegations of paragraph 3 of the amended bill of complaint.

[fol. 21]

IV

Defendants admit the allegations of paragraph 4 of the amended bill of complaint, except in so far as in said paragraph it is alleged that the defendants are about to institute vexatious suits and thereby interfere illegally with the property rights and privileges of the plaintiffs, which the defendant deny.

V

Defendants admit the allegations of paragraph 5 of the amended bill of complaint.

VI

Defendants admit the allegations of paragraph 6 of the amended bill of complaint, except the allegation that the plaintiffs paid substantial considerations in money for the interests in fee described in said paragraph, and state that they have no knowledge or belief as to that allegation.

VII

Defendants admit the allegations of paragraph 7 of the amended bill of complaint, except in so far as it is alleged that a portion of the royalties received by the plaintiffs during the year 1923 are taxed for said year under the general statutes of Minnesota, and state that they have no knowledge or belief as to said allegation.

VIII

Defendants admit the allegations of paragraph 8 of the amended bill of complaint.

IX

Defendants admit that if the plaintiffs should pay said tax, they could not maintain a suit in either the federal or the state courts to recover it.

[fol. 22]

X

Defendants state that they have no knowledge or belief as to whether this suit and the application for restraining order and injunction herein are in good faith, and deny that the same are based upon proper and reasonable grounds of contest as to the constitutionality and the validity of the statute, and deny that the plaintiffs are entitled to the protection of this court as against the imposition of the penalties and interest imposed thereby, and deny that the imposition of such penalties and interest is inequitable and unjust.

XI

Defendants admit the allegations contained in the first sentence of paragraph 11 of the amended bill of complaint, and admit that the

amount of the tax as determined by the Minnesota Tax Commission will on June 1, 1924, become a lien upon the right, title, interest and estate in said lands owned by the plaintiffs on which the royalty was paid, and will thereafter remain a lien thereon until the tax is paid.

Defendants deny that under the statute the state is not required to bring an action to collect said tax within any certain time, but allege that it is the duty of the attorney general of the state to bring such action forthwith upon the nonpayment of the tax when due.

XII

Defendants deny the allegations of paragraph 12 of the amended bill of complaint.

XIII

Defendants deny the allegations of paragraph 13 of the amended bill of complaint.

XIV

Defendants deny the allegations of paragraph 14 of the amended [fol. 23] bill of complaint.

XV

Defendants deny the allegations of paragraph 15 of the amended bill of complaint.

XVI

Defendants deny the allegations of paragraph 16 of the amended bill of complaint.

XVII

Defendants deny the allegations of paragraph 17 of the amended bill of complaint.

XVIII

Defendants deny the allegations of paragraph 18 of the amended bill of complaint.

Having thus made a full answer to all the matters and things contained in the amended bill, the defendants pray that said bill be dismissed and for judgment for their costs in this behalf incurred.

Dated April 4, 1924.

Clifford L. Hilton, Attorney General; G. A. Youngquist, Assistant Attorney General, Solicitors for Defendants, 102 State Capitol, St. Paul, Minnesota. Patrick J. Ryan, of Counsel, Guardian Life Building, St. Paul, Minnesota.

[fol. 24] Sworn to by Clifford L. Hilton. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed Feb. 2, 1924

This matter having come on before the undersigned, Judge of said Court, on the 2nd day of February, 1924, at the Court Rooms in the City of Duluth, Minnesota, pursuant to motion of the plaintiffs for a temporary restraining order and upon an order to show cause, of which due notice was given to each of the defendants, Mr. Elmer F. Blu appearing for the plaintiffs and Mr. G. A. Youngquist, Assistant Attorney General of Minnesota, appearing for the defendants, and the Court being fully advised in the premises and it being made to appear by the averments of the bill of complaint herein that irreparable loss or damage will result to the plaintiffs before the hearing of the plaintiffs' application for an interlocutory injunction can be had, unless the defendants herein are, pending the said hearing, enjoined and restrained as prayed for in said bill of complaint,

It is ordered that the defendants and each of them be and they hereby are enjoined, restrained and prohibited, either as individuals or as representatives of the State of Minnesota, until the hearing [fol. 26] and determination of the plaintiffs' motion for an interlocutory injunction and until the further order of the court herein, from acting under or in pursuance of, or from in any way carrying out or enforcing the provisions of, the act of the Legislature of the State of Minnesota, being Chapter 226 of the Laws of 1923, entitled "An act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explor-, mine, take out and remove ore from the same," so far as the plaintiffs herein are concerned, except that the defendants shall not be enjoined or prohibited from receiving and filing any reports which the plaintiffs may make pursuant to said statute.

Dated at Duluth, Minnesota, this 2nd day of February, 1924.

Wm. A. Cant, Judge.

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE RESTRAINING ORDER—April 7, 1924, as of Jan. 12, 1924

[fol. 28] It is hereby stipulated by the parties hereto that the issues in the above entitled proceedings shall be heard and determined

on the merits by Honorable William A. Cant, at St. Paul, Minnesota, on April 7, 1924, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, and that the restraining orders heretofore issued herein shall remain in full force and effect pending said determination of the issues on the merits in lieu of an interlocutory injunction pursuant to the requirements of the act of Congress relating thereto, the application therefor, hearing thereon and determination thereof by three judges being hereby expressly waived.

Washburn, Bailey & Mitchell, Solicitors for Plaintiffs in Royal Mineral Association et al. v. Lord et al. and William E. Boeing et al. v. Lord et al. J. W. Hunt, W. D. Bailey, Solicitors for Plaintiffs in Robert B. Whiteside et al. v. Lord et al. C. A. Severance, George W. Morgan, Solicitors for Plaintiffs in Lake Superior Consolidated Iron Mines et al. v. Lord et al. Fred B. Snyder, Edward C. Gale, John R. Vanderlip, Solicitors for Plaintiffs in Bardwell et al. v. Sargent Land Company et al. —— ——, Solicitors for Plaintiffs in Burrows et al. v. Lord et al. Clifford L. Hilton, Attorney General; G. A. Youngquist, Assistant Attorney General, Patrick J. Ryan, Solicitors for Defendants.

[fol. 29] Let this stipulation be filed as of January 12, 1924. Dated April 7, 1924.

Wm. A. Cant, Judge.

[File endorsement omitted.]

[fol. 30] In United States District Court

[Title omitted]

Agreed Statement of Facts—Filed April 8, 1924

For the purpose of trial of the above entitled suit, it is hereby stipulated and agreed by and between the respective parties hereto that, subject to objections as to relevancy and materiality, the following facts may stand as admitted; that any party may introduce evidence in the regular manner upon the trial of this cause relative to any matters properly within the issues covered by the pleadings and not controverting the facts herein stipulated. Subject to such understanding, it is agreed as follows:

1. Wherever matters are alleged in the amended bill of complaint and admitted in the answer thereto, the matters so alleged and admitted shall be deemed proven.

2. The taxes which the Minnesota Tax Commission threatens to levy against the Lake Superior Consolidated Iron Mines, plaintiff herein, for the year 1923, are upwards of $50,000.00 and, against the other plaintiffs, are very substantial sums.

3. The facts set forth in the paragraphs numbered 14 to 22 inclusive of the agreed statement of facts in the case of Royal Mineral [fol. 31] Association, et al., against Samuel Lord, et al., and two other cases tried with said case, shall be deemed to have been proven as part of the record in this case.

The four properties referred to in paragraph 14 of said agreed statement of facts, operated by the owners thereof, were owned and operated by persons other than the plaintiffs herein.

Of the properties referred to in paragraph 21 of said agreed statement of facts, only ten are owned by any of the plaintiffs herein.

4. The evidence, including the oral stipulations, in said case of Royal Mineral Association et al., against Samuel Lord, et al., outside of said agreed statement of facts, shall be available to any party hereto as fully as if the same had been received as part of the record in this case.

C. A. Severance, George W. Morgan, Solicitors for Plaintiffs. Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of Counsel for Plaintiffs. Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 32] Paragraphs numbered 14 to 22, inclusive, of the agreed statement of facts in the case of Royal Mineral Association, et al., vs. Samuel Lord et al., and two other cases tried with said case and referred to in the foregoing agreed statement of facts in the case of Lake Superior Iron Mines, et al., vs. Samuel Lord, et al., are in the following language, namely:

"14. That in 1923 there were in Minnesota one Hundred twenty-four (124) mines in operation (including State owned mines), producing 45,300,000 tons of ore. There were, during the year 1923 in Minnesota four instances in which fee owners, other than these plaintiffs, operated their own properties and sold the ore produced, without receiving or paying royalties thereon; that in two of those instances the operation was largely a cleaning-up process, the mines being near exhaustion, the ore produced from these two properties amounting to approximately 92,000 tons; and in the third instance the operator mined his fee-owned property in connection with adjoining leased property, producing from the former 91,000 tons of ore and from the latter 111,000 tons of ore; and in the fourth instance there remained about 250,000 tons of open pit ore, of which 128,000 tons were removed in 1923 and the remainder of which the owner intends to remove forthwith, and that there remains 3,200,000 tons of underground ore which the owner does not intend to mine for several years to come but does intend to mine later.

"15. In very many instances, in fact in the majority of cases where mines are operated, they are operated by lessees who derive the

consideration or returns for the ore produced through mining and selling it, and do not receive any returns through royalties paid to them, and this was true in 1923.

[fol. 33] "16. That the iron ore in the lands of the plaintiffs constitutes the chief value thereof, and that in the case of iron ore deposits as a general rule the entire substantial value thereof consists in such iron ore.

"17. That for the year 1923 the total amount of royalties on iron ore reported to the Minnesota Tax Commission was $16,347,004.22 of which amount approximately $9,538,151.87 was reported as being received by resident owners, excluding from such resident owners foreign corporations, and approximately $1,474,150.58 was reported as being received by corporations foreign to the State of Minnesota, the remaining approximately $5,334,701.77 being reported as received by non-residents of the State.

"18. All the known iron mines in the State of Minnesota lie in the northern or northeastern part of the State.

"19. That approximately one-half of the mines operated in Minnesota in 1923 were open pit mines and approximately three-fourths of the ore mined in 1923 was taken from open pit mines. In the usual course of mining from open pit mines, the surface is removed and the iron ore mined by the use of steam shovels.

"20. At various times two hundred forty-three (243) iron mines, underground and open pit, have been in operation, of which forty-five (45) have been exhausted.

"21. That the total tonnage of merchantable ore in Minnesota, according to the figures of the Minnesota Tax Commission in 1923, was approximately 1,300,000,000 tons. That during the year 1923 approximately forty (40) mines owned by subsidiary corporations of a certain corporation in fee were held by those corporations free from lease and were not operated, which mines, according to said figures, contained 344,000,000 tons of such ore. Seven (7) such mines were so held by one of such subsidiaries, which is an operating company, which was during said year engaged in mining, but not on any of said forty properties and that the present intention of said operating company is to mine said properties and not to lease them. [fol. 34] The remaining mines above referred to were in 1923, and previously, owned in fee by said subsidiary corporations of the parent corporation, and prior to 1923 several of the mines were operated by said operating company under arrangements between said operating company and said other subsidiary corporations, which arrangements did not in any instance involve the payment of any royalty by said operating company to any such owning subsidiary corporation. During 1923 one mine was operated under such arrangement, and it is the present intention of said corporations to continue the said prac-

tice of operating their said mines under the aforesaid arrangements, not involving the payment of royalties.

"22. During the last few years preceding 1923 there have been a number of instances in which iron ore properties not subject to lease have been sold outright and the fee transferred for a cash consideration, and a number of instances in which the fee of iron ore properties has been purchased by the lessee and the lease thereon cancelled. In 1923 there were at least two, and possibly more, instances in which fee owners of iron ore land which was not subject to lease sold the same for a cash consideration, or its equivalent, one of which consisted in the purchase of an undivided one-sixteenth interest in fee by a company which already held a lease on the remaining fifteen-sixteenths interest. There was one instance in 1923 where an undivided eleven-thirty-seconds of the interest in fee was sold subject to an existing lease, the purchaser of said undivided fee interest and the lessee under said subsisting lease being companies having the same stockholders. There was another instance in 1923 of the sale of the fee interest, which is described in the agreed statement of facts in Bardwell, et al. v. Sargent Land Company, et al. tried herewith."

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Evidence—Filed March 13, 1924

CAPTION

The above entitled cause came regularly on for hearing in the Federal Building, City of St. Paul, State and District of Minnesota, on the 7th day of April, 1924, before the Honorable William A. Cant, Judge; Messrs. C. A. Severance, George W. Morgan, Frank D. Adams and Elmer F. Blu, appearing on behalf of the plaintiffs, and Honorable Clifford L. Hilton, Attorney General, G. A. Youngquist, Assistant Attorney General, and Patrick J. Ryan appearing on behalf of the defendants;

Whereupon the following proceedings were had, to-wit:

It was stipulated that said cause for convenience should be heard with the case of Royal Mineral Association, a corporation, plaintiff, vs. Samuel Lord et al., defendants, Equity Case No. 99, and other similar cases, all of which are now on appeal to the Supreme Court of the United States.

[fol. 36] ERNEST S. MCGOWAN, of the Sales Department of The Universal Portland Cement Company, residing in Minneapolis, Minnesota, testified he has been engaged in that business for eighteen years and it is part of his work to keep track of the location of good

sand and gravel in connection with the sale of cement. From 750,000 to 1,000,000 yards or tons of gravel are used in the State of Minnesota per year in connection with the making of concrete and the use of cement, and upwards of 4,000,000 yards or tons for all purposes, including road work. Deposits of gravel are found in about one-half of the various localities in the state. A greater part of them are leased on a royalty basis. It is the exception rather than the rule that any other method is used. The royalty rate is usually about ten cents per yard, but in some cases it is fifteen cents and occasionally as high as twenty-five cents. It is common, as to comparatively large gravel pits, that a minimum payment per year, whether gravel is taken or not, is provided in the lease. The method of mining gravel is similar to the method of mining iron ore by open pit operations. The gravel requires a washing operation to remove soil, clay, etc., and hence is very similar to the open pit iron ore operation where the ore requires beneficiation. Gravel pits vary in depth from a few feet to sixty or seventy feet.

On cross examination witness testified that there are about forty large commercial pits in the state. It was his impression that nearly all of them are operated under lease. He had not ever personally examined any of those leases.

CHARLES H. YOUNG, Secretary of District #19, National Sand & Gravel Association, testified that he is a resident of St. Paul with an office in Minneapolis, and is president of Robbins, Young & Co., and operator of Landers, Morrison & Christenson Co., both companies being sand and gravel operators, and witness has been in [fol. 37] that business for ten years. There are more than forty commercial gravel pits of considerable size in the state. A number of them, three of the largest, are operated on a royalty basis and with the others it is quite general. The royalty usually runs from five cents up. His own companies own their properties. Gravel is found in commercial quantities in about one-half of the various localities in the state. Merchantable gravel should have a depth of from 20 feet up to about 70 feet. The annual production of gravel in the state of Minnesota for all purposes is in excess of 5,000,000 yards per year, of which over one-half is handled on a royalty basis, although he does not think he has personally inspected any of the leases; he is not sure. Where gravel is to be used for ordinary gravel roads it is not washed. When it is to be used for concrete it is washed.

PHIL MCCAULEY, a civil engineer, testified that he has been practicing his profession for fifteen years and has been in the Minnesota Highway Department for three years with the title of right of way engineer. A part of witness's duties is the leasing of gravel pits in

connection with the construction of trunk highways. The state in the last few years, in connection with the highway department, has been using from 500,000 to 1,000,000 tons or yards of gravel per year. The gravel is obtained in four methods: (1) The principal method is by what is called a patrolman's permit for a small amount of gravel on a royalty basis; (2) where a large quantity is wanted and the state has an exclusive right to it at so much per yard; (3) where a pit is leased for a period of years on a royalty basis; (4) where the pit is bought outright. About seventy-five per cent of the gravel is obtained on a royalty basis under the three methods first mentioned. The state now has about 1,500 to 1,800 gravel leases, including patrolman's permits, on a royalty basis. The royalty runs from three cents up to thirty-five cents. In extreme cases [fol. 38] it has been fifty cents, but that lease has been discontinued. It is generally from five to seven cents a cubic yard. Some of the leases provide for a minimum payment whether gravel is taken in a given time or not.

On cross-examination the witness testified that all of the gravel beds leased by the state were used for the purpose of furnishing gravel for state highways. Of the gravel pits that he has knowledge of in the state, particularly the larger pits, many are held and owned by railroad companies in connection with their work in keeping up their railroad business. Pits which are operated for the furnishing of gravel for purposes other than state, county or city road work or for railway purposes are comparatively few. At the height of the season there are about 1,000 patrolmen employed on the state highways.

Joseph Shiely, of St. Paul, Minnesota, testified that he is producer of mineral aggregates, sand, gravel and crushed rock, that he is president of J. L. Shiely Company, and is Secretary and Treasurer of National Sand & Gravel Association. The bulk of gravel in the state is handled on a royalty basis. His company last year produced 225,000 yards or nearly 300,000 tons, all from pits located within the city limits of St. Paul. They operate on a royalty basis, paying fifteen cents per cubic yard. There are several rock quarries in the state operating on a royalty basis. Witness has had some experience with the method of mining iron ore by the open pit method, having been employed at one time by Butler Brothers when the Cyprus Mines were open at Carson Lake, Minnesota. When iron ore is mined by the open pit method and ore is washed to make it marketable, the process as to machinery and plant equipment is very similar to that used in operating a gravel bed. Gravel bed leases generally provide a minimum royalty payment whether gravel is actually mined or not. There are instances [fol. 39] where there are subleases of gravel beds, the sub-lease providing for a higher royalty than the underlying lease. The annual production of gravel in Minnesota for commercial purposes, not including gravel used for highway purposes taken from pits used

or purchased for that purpose, runs about between 2,000,000 and 3,000,000 tons. Commercial gravel, washed, screened and crushed, is worth $1.25 per ton, f. o. b. St. Paul or Minneapolis.

CHARLES HAYDEN, Assistant Right of Way Land and Tax Commissioner of the Great Northern Railway Company, testified that he has held that position with the railway company for more than 20 years and in that connection has had to do with the leasing of gravel pits for the railway company. The railway company has leases of gravel pits made to others on a royalty basis.

D. E. WOODBRIDGE, mining engineer at Duluth, Minnesota, testified that he has recently made an investigation in the state offices and that the state of Minnesota, as lessor, has outstanding at the present time eleven leases on gravel beds and has had a total of thirty since 1921. All of the present eleven are on the basis of a royalty of five cents a yard. On those which have terminated the royalty has run from five cents to twenty-three and a half cents. Five of the eleven leases are to the county commissioners of St. Louis county, two to people in Hibbing, two to people in Chisholm, and two to people in Kinney.

In comparing the operation of iron mines and gravel pits, the first thing in both is exploration for quantity and quality. This is done in both cases either by drilling or test pitting, the properties are then stripped and the ore or the gravel is mined by mechanical process such as steam shovels, drag lines or the like. The general process of washing iron ore is to pass it through screens. The gen- [fol. 40] eral process of washing gravel is also to pass it through screens. The coarse ore is crushed and the coarse gravel is crushed. is crushed.

JOHN L. WATSON, Right of Way Commissioner of the Northern Pacific Railway Company, St. Paul, Minnesota, testified that it has been customary for his railroad to make leases on gravel pits on a royalty basis, of which they have three outstanding at the present time. These leases provide for an annual minimum payment whether any gravel is taken or not. The rate varies from five cents to ten cents per yard.

HECTOR MACCRAW, Mineral Clerk of the Minnesota Tax Commission, testified that according to the report of his department the total tonnage of the known merchantable iron ore on state owned land in December, 1922, was approximately 150,000,000 tons, with a total of 84 mining leases outstanding. For ore mined during the year 1923 the state was paid in royalties approximately $1,955,-

805.40. Most of the state leases are on a twenty-five cent royalty basis. The royalty paid in 1923 represents a tonnage mined of about 5,000,000 tons during that year. About one-tenth of the known merchantable iron ore in the state belongs to the state of Minnesota.

Stipulation re Facts

It was stipulated in the evidence that royalty rates in iron mining leases in the state of Minnesota vary from 12½ cents to $1.25.

It was further stipulated that it was understood that the sand and gravel witnesses testified that royalties on sand and gravel leases were actually paid during the year 1923.

It was further stipulated that it has been the practice in Minnesota for many years to lease real estate such as business lots in cities on long time leases for rentals payable from time to time in cash and that this was true during 1923.

[fols. 41 & 42] It was further stipulated that agricultural lands were, during 1923, and for many years last past had been, often and customarily leased for rentals, cash or otherwise in the state of Minnesota.

It was conceded that Chapter 226, General Laws of Minnesota for the year 1923 was the only statute providing a tax on rentals in the state of Minnesota.

It was also conceded by counsel for the defendants that the court had equity jurisdiction.

It is further stipulated and agreed that the foregoing transcript of evidence and proceedings had in the above entitled cause is a full, complete and correct statement thereof.

Dated this twelfth day of March, 1925.

C. A. Severance, George W. Morgan, Solicitors for Plaintiffs. Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of Counsel for Plaintiffs. Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants.

Judge's Certificate to Transcript of Evidence

The foregoing transcript of evidence is found to be true, complete and properly prepared, and is hereby approved.

Dated this 13th day of March, 1925.

Wm. A. Cant, Judge United States District Court.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION—Filed Jan. 16, 1925

The memorandum filed herewith in the case of Royal Mineral Association, et al., vs. Samuel Lord, et al., is attached and made a part of this case.

Let decree in the above entitled suit be prepared in accordance herewith and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixty (60) days after the entry of such decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

William A. Cant, Judge U. S. District Court.

[fol. 44] The memorandum filed in the case of Royal Mineral Association, et al. v. Samuel Lord, et al. and referred to in the foregoing order is in the following language, namely:

Memorandum

During the year 1921, the Legislature of the State of Minesota, enacted Chapter 223 of the laws of that year. This Act provided for the levy of a tax payable annually and amounting to six per cent of the valuation of all ore mined or produced within the State during the calendar year. Under the Act, such valuation is ascertained by making certain deductions from the value of such ore at the place where the same is brought to the surface of the earth. Among such deductions is: "4. The amount of royalties paid on the ore mined or produced during the year." This is an occupation tax. Oliver Iron Mining Co. vs. Lord et al., 262 U. S. 172. It is collectible by suit against the person from whom the same is due the same as other demands are enforceable

During the year 1923, the legislature of that State enacted Chapter 226 of the laws of that year. This Act provides that "There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter for permission to explore, mine and take out and remove ore from land in this State, a tax of six (6) per cent." By Section 8 of the Act, this tax is made a specific lien on the interest of the person from whom the tax shall be due, in and to the land on account of which the royalties are paid. Provision is also made for collection of the amount due by suit and by a sale thereunder of the interest in such land held by the person from whom the tax shall be due.

Various persons and corporations who are in receipt of royalty from ore lands in said State urge that the tax imposed under Chapter 226, supra, is in violation of certain provisions of the Constitution of the State of Minnesota, and of certain other provisions of the Con-

stitution of the United States, and they have brought a number of actions, of which this is one, to enjoin the enforcement of the tax. In a large way, the question is whether the Act runs counter to any of the constitutional provisions which have been invoked.

The important provision of the State constitution which is involved, is that "Taxes shall be uniform upon the same class of subjects." Article 9, Section 1.

The important provisions of the Constitution of the United States which are involved are found in that part of the Fourteenth Amendment, which reads: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Other constitutional provisions have been discussed on the argument and in the briefs. Without overlooking or minimizing the force of any of them, it may be said that they are either involved in a discussion of the specific provisions above set forth, or they yield to the argument which may be made against them. It is urged, for example, that the Act violates that provision of the Constitution of the United States which provides that "No State shall * * * pass any * * * law impairing the obligation of contracts." Article 1, Section 10. Giving the argument in that behalf due weight and consideration, it does not appear that the provision referred to is [fol. 45] applicable here. The laws as to taxation and the amount of the levy in any particular year are subject to constant change. All contracts are made subject to the right and the power of the State to make such modification in the laws with respect to future taxation as may seem necessary. Contracting parties may not in effect agree that the State shall not modify its revenue laws, or shall not either increase or diminish the burden of taxation. If the enactment in question is otherwise valid, it will stand as against this objection.

Speaking generally, unless the Act in question is invalid as against the uniformity clause of the State Constitution, with reference to taxation, above quoted, or as against the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, above quoted, it must stand. These provisions and the discussion thereunder are closely related in a case of this kind. The matter may be reduced to still lower terms. The question is whether this court should hold that the classification, royalties, adopted by the legislature of the State of Minnesota, as a basis of taxation, or for the computation of the tax under Chapter 226, Laws of Minnesota, 1923, is invalid, and that the tax levied pursuant thereto is void.

1. The following rules are specially applicable to the uniformity clause of the State Constitution:

(a) Where that clause is invoked in advance of a decision by the Supreme Court of the State, holding a state law to be in violation thereof, Federal Courts will not so declare, unless such holding shall be imperatively necessary. If there has been no decision by the Supreme Court of the State, the Federal Court will seek to anticipate

what the holding of the State Court would be, and will decide accordingly.

Louisville & Nashville R. R. Co. vs. Garrett et al., 231 U. S. 298, 305;
Pelton vs. National Bank, 101, U. S. 143, 144;
Pullman vs. Knott, 235 U. S. 23, 27;
Michigan Central R. R. Co. vs. Powers, 201 U. S. 245, 291;
Coulter vs. Louisville & Nashville R. R. Co. 196 U. S. 599, 609.

(b) The two cases last above referred to clearly indicate that the Federal Courts are especially loth to interfere where the Act in question involves the revenues of the State.

(c) The Supreme Court of the State of Minnesota has not passed upon the validity of the Act in question.

(d) The holdings of the Supreme Court of the State of Minnesota, as respects classification for the purpose of taxation, are that the legislature has a very wide range of discretionary power. Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 181. State vs. Royal Mineral Ass'n. 132 Minn. 232, 235. There are well recognized limitations to this power which serve as guides in the exercise thereof. "The classification must be reasonable, and such as is suggested by essential differences of nature, situation, or circumstances, or by characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto the ordinary methods [fol. 46] of taxation."

Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn., 179, 181, 182;
State ex rel. St. Paul City Ry. Co. vs. Minnesota Tax Commission, 128 Minn. 384.

2. The following rules are applicable to cases where the due process clause or the equal protection clause of the Fourteenth Amendment is invoked, or where one or both of those clauses and the uniformity clause of the State Constitution are involved.

(a) Under all the authorities the classification must be a reasonable one and such as essential differences suggest.

State ex rel vs. Minnesota Tax Commission, 128 Minn. 384;
Gulf Colorado & S. F. Ry. Co. vs. Ellis, 165 U. S. 150, 155;
Southern Ry. Co. vs. Greene, 216 U. S. 400, 417.

(b) The decided policy of the Supreme Court of the United States when the foregoing clauses are invoked, is to announce and enforce the rule allowing State legislatures a wide discretionary power with respect to classification for purposes of taxation. Bell's Gap Ry. R. Co. vs. Penn. 134 U. S. 232.

"Granting the power of classification, we must grant government the right to select the differences upon which te classification shall

be based, and they need not be great or conspicuous. Keeney as Admr. vs. Comptroller, etc., 222 U. S. 525, 536. The State is not bound by any rigid equality." Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331."

"Any classification is permissible which has a reasonable relation to some permitted end of Governmental action. It is not necessary * * * that the basis of the classification must be deducible from the nature of the things classified. * * * It is enough, for instance, if the classification is reasonably founded in 'the purpose and policy of taxation.'"

Watson vs. State Comptroller, 254 U. S. 122, 124, 125;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255.

"Passing on that amendment (the 14th) we have repeatedly decided * * * that it does not take from the States the power of classification, and also that such classification need not be either logically appropriate or scientifically accurate. * * * A wide range of discretion, therefore, is necessary in legislation to make it practical." District of Columbia vs. Brooke, 214 U. S. 138, 150."

"There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people. That its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment. Middleton vs. Texas Power & Light Co., 249 U. S. 152, 157."

[fol. 47] Without extended discussion, the same view is taken in National Paper & Type Co. vs. Frank K. Bowers, Collector, U. S. Supreme Court, Dec. 15, 1924.

The equal protection clause of the Fourteenth Amendment does not prohibit double taxation by the States,

Shaffer vs. Carter, 252 U. S. 37, 58;
Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325, 330.

(c) The limitation upon this power of classification is that "It must not be exercised in clear and hostile discrimination between particular persons and classes."

Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255;
Bell's Gap R. R. Co. vs. Penn. 134 U. S. 232, 237."

(d) In Dawson vs. Kentucky Distilleries Co 255 U. S. 288:

(1) The Court was dealing with nondescript imposition from the beginning.

(2) The basis of the alleged classification and tax was elusive, shifty and unsatisfactory. It was not uniform on property of essentially the same class.

(3) The Act "Imposed upon every person engaged in the business of manufacturing whisky, or in the business of owning and storing

the same in bonded warehouses within the State, what was called an 'annual license tax' of fifty cents a gallon upon all whisky either withdrawn from bond or transferred in bond from Kentucky to a point outside the state."

(4) Though called an annual license tax in the Act, the imposition was held to be a tax on the property.

(5) On the argument it was conceded by the authorities seeking to uphold the tax, that if it was a tax on property, the same was void.

(6) In view of the concession so made, the question of classification was not given extended discussion by the Court.

3. Various facts bearing upon the propriety and justice of the classification here involved must be considered.

The iron deposits constitute a very substantial part of the easily available great natural wealth of the State of Minnesota. Development and operation of iron mines, a highly necessary and important industry, means at the same time the exhaustion of that wealth. Such exhaustion attends also the removal of the products of stone quarries and of gravel beds and the cutting and removal of certain kinds of timber. Generally, the development and successful prosecution of any enterprise increases the taxable wealth of the State. In large part, the products of quarries, gravel beds and forests remain within the State and in some form serve as the basis of taxation therein. With respect to iron ore, however, practically all that is mined is being transported beyond the limits of the State. Great [fol. 48] natural wealth which serves as the basis of taxation is annually being withdrawn therefrom. Of necessity the revenues of the State will be substantially affected thereby.

4. Without doubt, when the Legislature of 1923, met and considered problems of taxation, it knew of Chapter 223, Laws of 1921. State vs. Klasen, 123 Minn. 382. That Act was presumably valid. On its face, it pointed to the fact that one of the interests concerned in the mining industry was thereby subjected to a tax of six per cent. It also disclosed the fact that in cases where the mine was leased, the other interest, that represented by the person who received royalties, was not subjected to any such burden. The legislature found this latter class adready carved out by the earlier Act. In 1923, the general purpose apparently was to assure the State a return of a full six per cent, less certain minor deductions, on the value of all ore mined and brought to the surface of the earth. And the further general purpose apparently was to adjust this burden equitably as between the two classes of interests concerned in the operation where the mine was being operated by a lessee. One of these classes, represented by the operator, was specified in Chapter 223, supra, and the tax burden by that Act was imposed thereon. The other interest, represented by those receiving royalties was specified in Chapter 226, Laws of 1923, and a tax in a different form was imposed on that class. The latter Act was designed to complement the former, which related to the same general subject matter.

In the consideration of this case, it is neither possible, nor proper to divorce entirely the two acts which have been referred to. Either separately, or together, they indicate the policy of the State with reference to the taxation of the interests therein specified.

5. The Federal Constitution does not require that the two classes above referred to should have been covered by the same enactment, or that the two together should have exhausted the subject and covered the entire field. "The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment." Supra.

6. The basis of classification which may be invoked in support of Chapter 226, is the circumstance or condition that of necessity, the lands to which the Act applies, in the course of their development, as operating mines, are being and will be depleted in value and ultimately will be lost to the State as a source of substantial revenue. This is the underlying consideration. The desire of the legislature was to reach the interests involved in property of that class and apply thereto a special tax. If such lands may properly be placed in a class by themselves, the rest is a matter of identifying the interests therein for the purpose of taxation. This latter may be called classification of such interests, but it is little more than identification thereof—a pointing out and specifying of the particular interests sought to be taxed.

7. We are concerned to learn whether there was reasonable ground for this classification, and whether under the provisions of the Act, all within the class involved in Chapter 226, may be treated alike. [fol. 49] The burden is on the plaintiff to answer one or both of these questions clearly in the negative. If there has been no "clear and hostile discrimination between particular persons and classes," the law should stand.

Having in mind the real basis for the classification adopted, the fact that other mining properties, not in process of being wasted or depleted, are not included under the provisions of the Act, is not important. This is true whether they are being sold and transferred from time to time, like other property, or are not. With the lapse of time, as such properties come within the class contemplated, the Act will apply. In time, presumably, all ore-bearing properties of substantial value in the State will become subject to the provisions of the law in question.

Chapter 226 is not invalid, because it may be subject to technical criticism, or will not work with perfect nicety of detail, or because conditions may be thought of which would seem to involve differences and inequalities.

"The difference, however, is one such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases and cannot be regarded as unfriendly or unreasonable discrimination."

Shaffer vs. Carter, 252 U. S. 37, 57.

In Oliver Iron Mining Co. vs. Lord, et al., 262 U. S. 172, 181, the Court says: "It is also said that the royalty provision and others respecting taxes will work a discrimination as between lessees in that some will be subjected to a higher tax than others. No doubt, there will be differences in the amount, but they will result from differences in situation and not from differences in treatment. Some lessees pay higher royalties than others and will secure a higher deduction on that score. * * * In short, the tax is to be adjusted to the value of the output, less the major expenses of the business, and this according to uniform rules. We, therefore, cannot say that it is intended to, or will work any arbitrary or unreasonable discrimination as between different lessees."

The circumstance that during the year 1923, plaintiff may have been assessed under the head of "Money and credits," on account of funds then on hand and received as royalties during that year, falls within the foregoing observations and authorities.

The fact that other wasting properties, such as stone quarries, or gravel beds, or certain timber areas are not included in the Act here under consideration, does not invalidate the classification. They might have been included, but the differences and distinctions between them and that which was included, justifies their omission. The differences upon which to base a classification "Need not be great or conspicuous." Supra. Anthracite coal may be classified separately from bituminous coal. Meat packing may be classified separately from the packing of other food products. A special tax may be imposed on dealers in certain specified articles, while dealers in other articles go free.

Heisler vs. Thomas Colliery Co. 260 U. S. 245;
Armour Packing Co. vs. Lacy, 200 U. S. 226;
Southwestern Oil Co. vs. Texas, 217 U. S. 114, 121.

[fol. 50] 8. The legislature has made the classification. First, in a class by themselves, are the ore lands which are in process of being mined, and, therefore, depleted, and which within a comparatively brief time will be lost to the State as a source of revenue. This clearly distinguishes these lands from other lands in general and from other ore lands in particular. The distinction is based on grounds which have a legitimate relation to the question of taxation. Facing the depletion of certain lands and the loss of their value, the State might be justified in imposing a heavier tax thereon during the intervening time, knowing that when that time should elapse there could be no further substantial tax at all. There is no apparent difficulty in making the classification or in according uniformity of treatment in connection therewith.

9. Next is the identification of the separate interests here involved for purposes of taxation, or the classification thereof. As already indicated, as the mining operation and the depletion of the property are usually carried on, there are two classes of persons, or two sets of interests, and no more, concerned therein. They are the operator who does the mining, and the owner whose ore is being mined, and

the respective interest of each. The interests of an intervening lessee are identified with those of the owner for the purposes here in mind. Although together, the owner and the operator are possessed of the entire interest in the property, their relations thereto are markedly different. So great is that difference that one class, or set of interests may be taxed without the other, as was done by the Act of 1921, and doubtless, different rates of taxation may be imposed, and, as will be seen, different forms of tax may be levied thereon. There is no practical difficulty in recognizing these two classes as separate and distinct for purposes of taxation, and in according uniformity of treatment to all within each class. It is a matter largely of specifying interests, very different in character, which it is sought to reach for purposes of taxation. One is dealt with in the Act of 1921. The right to select that interest as the basis for the imposition of a separate tax is recognized in Oliver Iron Mining Co. vs. Lord et al. supra. Although the tax under the Act of 1921, is an occupation tax, the same is levied because of the operator's relation to the land and in the last analysis, because of his interest therein. By the Act of 1923, the entire remaining interest is made the basis for the tax there imposed. In cases where there is but one ownership, the tax is imposed under the Act of 1921.

10. In a case where it is clearly made out that a law is unconstitutional, the Court should not hesitate to so declare. If such proof shall not be made, or if the matter is left in doubt, the law should stand. Invoking now and applying some of the basic rules hereinbefore set forth,—this Court must be slow to hold a State law invalid; under the evidence here, such a holding is not "imperatively necessary;" in enacting the particular law here involved, the State legislature had "a very wide range of discretionary power;" the classification adopted by the legislature "is a reasonable one and such as essential differences suggest;" such classification does not indicate any "clear and hostile discrimination between particular persons and [fol. 51] classes" cannot be said that the classification adopted was not "suggested by * * * characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto the ordinary methods of taxation." It is not clearly shown that Chapter 226, supra, is in violation of either the State or the Federal constitution. The Act, therefore, should be held valid. The justice or injustice of the tax, and the question of where it should ultimately fall, and by whom ultimately it should be paid, are not for determination here and no coment is made thereon.

11. In a sense it may be said that the two taxes herein referred to are together imposed upon the mining operation as a whole, as the same affects any particular description of land. Undoubtedly, the Legislature of 1923, had something like this in mind. This would not require that the two taxes should be of the same kind. The character of the tax depends upon the legislative intent as expressed in the law. Under either Act, the tax might have been laid as an

occupation tax, or as an income tax, or as a tax on the land, as might at the same time be applicable and valid and best give effect to the legislative will. Under the Act of 1921, the convenient and practicable form to employ was that of an occupation tax. Taken literally, the Act of 1923, provides for a tax on royalties. Certain non-residents of the State of Minnesota, urge that as to them, the situs of the royalty is never within the jurisdiction of that State, and, therefore, that the royalty cannot be taxed therein. Shaffer vs. Carter, 252 U. S. 37, 55, is opposed to this view and as against the objection referred to, if the Act were construed as providing for a direct tax on royalties, it would stand. Looking through the Act, however, to the real substance thereof, it is essentially a tax upon the interest in the land owned by the person by whom the tax should be paid and it is so considered in the determination of this case. The amount of the royalty is the basis to be used in the computation of the tax.

Pollock vs. Warmers' Loan & Trust Co., 157 U. S. 429, 581.

12. The question of what royalty receipts shall be included in the computation of the tax for the year 1923, is not decided. It is assumed that in the administration of the law, the Act in question will be so construed as not to offend against any constitutional provision.

From the foregoing, if correct, it follows that the relief prayed for should be denied.

Let decree in the above entitled suit be prepared in accordance herewith, and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixty days after the entry of such decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[fols. 52 & 53] In United States District Court

[Title omitted]

Decree—Jan. 15, 1925.

This cause came duly on to be heard and was argued by counsel and upon consideration thereof it is ordered, adjudged and decreed that the bill of complaint herein be, and the same hereby is, dismissed with costs to the defendants to be taxed.

It is further ordered that the temporary restraining order heretofore issued in this suit be and remain in full force and effect for the period of sixty (60) days after the entry of this decree for the purpose of allowing an appeal to be taken therefrom.

William A. Cant, Judge U. S. District Court.

[fol. 54] UNITED STATES DISTRICT COURT

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Feb. 16, 1925

Now come the plaintiffs in the above entitled action, Lake Superior Consolidated Iron Mines, a corporation, et al., feeling themselves aggrieved by the final decree made and entered in the above entitled cause on the sixteenth day of January, 1925, by their counsel, and do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based duly authenticated, be sent to the Supreme Court of the United States. And your petitioners further pray that the court do order that the temporary restraining order heretofore issued in this cause be and remain in full force and effect pending the appeal herein and until the final determination of this cause.

C. A. Severance, George W. Morgan, Solicitors for Plaintiffs and Appellants Herein. Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of Counsel.

The foregoing petition is granted and plaintiffs' appeal allowed; [fol. 55] and plaintiffs having given bond as required by this court, it is ordered that the temporary restraining order heretofore issued in this suit be and remain in full force and effect pending said appeal and until the final determination of this cause.

Wm. A. Cant, Judge of the United States District Court.

Feb. 16, 1925.

[File endorsement omitted.]

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Feb. 16, 1925

Plaintiffs, in connection with their petition for an appeal in the above entitled cause, present the following assignments of error upon which they will rely in said appeal. The Court erred:

I

In dismissing plaintiffs' bill of complaint and entering a decree for the defendants.

II

In holding that the tax imposed by Chapter 224 of the Laws of Minnesota 1923 is not in violation of Article I, Section 10, of the Constitution of the United States, which provides that "No state shall * * * pass any * * * law impairing the obligation of contracts."

III

In holding that the tax so imposed is not in violation of Article IX, Section 1, of the Constitution of the State of Minnesota, requiring that taxes shall be uniform upon the same class of subjects.

IV

In holding that the tax is not in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, securing to all persons within the state the equal protection of the laws.

[fol. 57]

V

In holding that the tax is a tax on the interest of the lessors in mining properties, if by so holding the court intended to hold that the tax is a tax upon land.

VI

In holding that the tax, if held to be a tax on land, is valid notwithstanding the constitutional provisions above referred to, although mining properties not operated are not subject to the tax.

VII

In holding that the tax, if held to be a tax on land, is valid notwithstanding the constitutional provisions above referred to, although other wasting properties are not subject to the tax.

VIII

In holding that the fact that iron lands are being depleted of their natural wealth furnishes any proper basis for classification under which they may be subject to special and double taxation.

IX

In failing to hold that the tax, if held a tax upon land, operates unequally against the plaintiffs in that no corresponding tax is imposed upon any land other than mineral lands operated on a royalty basis, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article IX of the Constitution of Minnesota.

X

In failing to hold that the tax, if a tax upon the sale price or the proceeds of mineral lands or of the iron ore therein, operates unequally against the plaintiffs in that no corresponding tax is imposed upon the proceeds of the sale of any lands other than mineral lands and when such proceeds are received by way of royalties, all in viola-
[fol. 58] tion of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article IX of the Constitution of Minnesota.

XI

In failing to hold that the tax, if a tax on rents and profits of mineral lands, operates unequally upon the plaintiffs in that no corresponding tax is imposed upon rents and profits except when the same accrue to the owner thereof in the form of royalties, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article IX of the Constitution of Minnesota.

XII

In failing to hold that the tax, if an income tax, operates unequally against the plaintiffs herein in that no corresponding tax is imposed upon income from any other source, including income derived from mineral lands other than in the form of royalties, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article IX of the Constitution of Minnesota.

XIII

In failing to hold that the tax, if a tax upon moneys received as royalties, operates unequally against plaintiffs in that no corresponding tax is imposed upon moneys derived from other sources, and that such attempted classification of moneys and credits according to the source from which derived is unreasonable and invalid, all in violation of the Fourteenth Amendment of the Constitution of the United States and Section 1 of Article IX of the Constitution of Minnesota.

[fol. 59] XIV

In failing to hold that the tax is a hostile discrimination in the guise of a tax and, therefore, a denial of equal protection of the laws and a taking of property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

XV

In failing to hold that the royalties received by the plaintiffs Lake Superior Consolidated Iron Mines and Northern Development Company, received by them in the State of New York, have no situs within the State of Minnesota for the purpose of taxation and are not subject to the tax imposed by said act.

XVI

In failing to hold that plaintiff was entitled to the relief prayed for in the bill of complaint and to enter a decree permanently enjoining the defendants from enforcing the provisions of said act.

C. A. Severance, George W. Morgan, Solicitors for Plaintiff. Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of Counsel.

[File endorsement omitted.]

[fols. 60 & 61] CITATION—In usual form, showing service on Clifford L. Hilton; filed Feb. 19, 1925; omitted in printing

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[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed March 13, 1925

It is hereby stipulated and agreed that the Clerk of this Court shall incorporate in the transcript of the record on the appeal in the above entitled cause to the Supreme Court of the United States the following:

1. The amended bill of complaint.
2. The amended answer.
3. The restraining order.
4. Stipulation for hearing and continuing restraining order.
5. Agreed statement of facts, into which was incorporated paragraphs numbered 14 to 22, inclusive, of the agreed statement of facts in the case of Royal Mineral Association, a corporation, plaintiff, vs. Samuel Lord et al., defendants, Equity case No. 99, now also on appeal to the Supreme Court of the United States, which case for convenience was heard at the same time and with the above entitled cause.
6. Agreed transcript of evidence.
7. Opinion of court and order for decree.

[fol. 63] 8. Decree.

9. Petition for appeal and order allowing same and continuing restraining order.
10. Assignments of error.
11. Citation.
12. Stipulation for transcript of record.

Dated this 12th day of March, 1925.

C. A. Severance, George W. Morgan, Solicitors for Plaintiffs. Davis, Severance & Morgan, Frank D. Adams, Elmer F. Blu, of Counsel for Plaintiffs. Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Joel M. Dickey, Clerk of the above named court, do hereby certify and return to the Honorable The Supreme Court of the United States, that the foregoing consisting of 64 pages, numbered consecutively from 1 to 64, is a true and complete transcript of all the records, process, pleadings, orders and final decree, and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said Court and in accordance with a præcipe for such transcript, a copy of which is included within said paging; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with admission of service thereof.

In witness whereof, I have hereunto set my hand as the Clerk aforesaid and affixed the Seal of said Court at Duluth, in the District of Minnesota, this 14th day of March, A. D. 1925.

Joel M. Dickey, Clerk, by Catherine Neff, Deputy. (Seal of U. S. Dist. Court, Dist. of Minnesota, Fifth Division.)

Endorsed on cover: File No. 30,990. Minnesota D. C. U. S. Term No. 336. Lake Superior Consolidated Iron Mines, Oliver Iron Mining Company, Northern Development Company, et al., appellants, vs. Samuel Lord, J. G. Armson, and Odin Halden, constituting the Minnesota Tax Commission, et al., etc. Filed March 30, 1925. File No. 30,990.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 355

GEORGE L. BURROWS, JR., ALICE B. BEAUMONT, ELIZABETH B. HUNTINGTON, ET AL., ETC., ET AL., APPELLANTS,

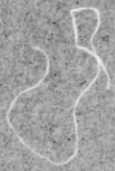
vs.

SAMUEL LORD, JAMES G. ARMSON, ODIN HALDEN, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

FILED APRIL 13, 1925

(31,025)



(31,025)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 355

GEORGE L. BURROWS, JR., ALICE B. BEAUMONT, ELIZABETH B. HUNTINGTON, ET AL., ETC., ET AL., APPELLANTS,

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FIFTH DIVISION**

In Equity

GEORGE L. BURROWS, JR., ALICE B. BEAUMONT, ELIZABETH B. Huntington, Lucy B. Morley, Mary Sage B. Fowler, and Edwina B. Montague, as Residuary Devisees and Legatees of George L. Burrows, Deceased, and George L. Burrows, Jr., and John W. Beaumont, Executors of the Will of said George L. Burrows, Deceased, and Estelle Rust, James G. Macpherson, and Charles J. Reynick, Trustees of the Ezra Rust Mining Property, and Detroit Trust Company, a Michigan Corporation, as Trustee under Trusts Created by Gilbert B. Goff, now Deceased, Plaintiffs.

vs.

SAMUEL LORD, JAMES G. ARMSON, ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota; Henry Rines, State Treasurer of Minnesota, Defendants.

BILL OF COMPLAINT—Filed March 11, 1924

[fol. 3] Plaintiffs allege and show to the court as follows:

(1) That plaintiffs, George L. Burrows, Jr., Alice B. Beaumont, Elizabeth B. Huntington, Lucy B. Morley, Mary Sage B. Fowler, Edwina B. Montague, and George L. Burrows, Jr., and John W. Beaumont, executors of the will of George L. Burrows, deceased, and Estelle Rust, James G. Macpherson and Charles J. Reynick, as Executors of the will of Ezra Rust, Deceased, and as Trustees under said will, and Detroit Trust Company, a Michigan corporation, as Trustee under Trusts created by Gilbert B. Goff, now deceased, are and for many years last passed have been and now are residents and citizens of the State of Michigan.

(2) That the defendants, Samuel Lord, James G. Armson, and Odin Halden, constitute the Minnesota Tax Commission of the State of Minnesota; that Clifford L. Hilton, is the Attorney General of the State of Minnesota and Raymond P. Chase is the State Auditor of the State of Minnesota and Henry Rines is the State Treasurer of the State of Minnesota, and all of said defendants are residents and citizens of the said State of Minnesota.

(3) That on, to wit, October 2, 1899, plaintiffs' predecessors in title, George L. Burrows, Ezra Rust and Gilbert B. Goff, each owning an undivided one-third interest in the mineral rights of a certain mine known as the Rust Mine, situated in the town of Hibbing, St.

Louis County, Minnesota, leased the same to Lake Superior Consolidated Iron Mines for a period of 50 years and three months from and after October 1, 1899, a copy of which said lease is hereto attached and marked Exhibit "1". That the lessee's interest in said lease was subsequently assigned to Oliver Iron Mining Company, and said lease is still in force. That under the terms of said lease, the lessees were required to pay to the lessors 25¢ per ton on the [fol. 4] 10th day of January, April, July and October in each calendar year for all iron ore mined and shipped from the said mine during the three months immediately preceding the first day of the month in which the payment shall become due. That said several payments were required to be made at and to George L. Burrows & Company Bank at Saginaw, Michigan, or at and to any other bank in the city of Saginaw, Michigan, or elsewhere, in one of the United States, as the lessors, their executors, administrators or assigns from time to time might designate in writing. That no other place of payment has ever been designated.

(4) That said George L. Burrows, one of the parties to the lease hereinbefore referrred to and owner of an undivided one-third of the mineral covered thereby and one-half of the surface covered thereby, departed this life on the 9th day of November, 1921, leaving the said George L. Burrows, Jr., Alice B. Beaumont, Elizabeth B. Huntington, Lucy B. Morley, Mary Sage B. Fowler and Edwina B. Montague as his children and sole devisees under his will, each entitled to an undivided one-sixth of his estate. That his will was admitted to probate by the Probate Court of Saginaw County, Michigan, and said George L. Burrows, Jr., and John W. Beaumont, were appointed his executors and have duly qualified and are acting as such; that ancillary administration was had and the will was admitted to probate in the Probate Court of St. Louis County, Minnesota, and said George L. Burrows, Jr., and John W. Beaumont, were duly appointed executors of said estate in Minnesota, and said Minnesota estate has been closed, the executors therein discharged and said estate including said mineral rights and the rights of George L. Burrows, deceased, in and to said lease, was duly assigned by said Probate Court of St. Louis County, Minnesota on November 28, 1923, to said six children, plaintiffs herein, in equal shares.

[fol. 5] That said Ezra Rust, one of the parties to the lease hereinbefore referred to, and owner of an undivided one-third of the mineral covered thereby, and of one-half of the surface covered thereby, died on January 3, 1918, leaving a Last Will and Testament, which said Last Will and Testament has been admitted to probate in the Probate Court for the County of Saginaw, State of Michigan, the domicile of said Ezra Rust in his lifetime, and which said will has been admitted to probate in the State of Minnesota;

That the interests of said Estate of Ezra Rust in said lease under said will, belong to Estelle Rust, James G. Macpherson and Charles J. Reynick, as Trustees under said will, and to their successors in said trust;

That said Estate of Ezra Rust has been closed in the State of Minnesota, and that on July 28, 1919, Final Decree of Distribution in said Estate was made in the Probate Court for the County of St. Louis, and that all right, title and interest of said decedent in and to the said lease, and the mineral covered thereby, and of the surface of said lands, was assigned to and vested in Estelle Rust, James G. Macpherson and Charles J. Reynick, as Trustees, and their successors in said trust, according to the Last Will and Testament of said decedent, Ezra Rust, and that said Trustees under said will, are all residents and domiciled in the State of Michigan, and are now collecting said royalties under said lease;

That copy of said will of Ezra Rust, marked Exhibit "2", is hereto attached, hereby referrred to and made a part hereof;

That on March 9, 1911, Gilbert B. Goff (who died September 6, 1911) executed and delivered to Ernest A. Goff, one of his sons, and to his successors in trust, two deeds of trust, each conveying an undivided one-ninth interest in the mineral deposits of the lands cov- [fol. 6] ered by the lease of the Rust Mine and to other Minnesota lands and the royalties derived therefrom, which deeds were recorded in the office of the Register of Deeds of St. Louis County, Minnesota, on November 8, 1911, one in Book 350 of deeds on page 243 and the other in Book 351 of Deeds on page 141; that on February 2, 1914 the said Ernest A. Goff resigned as trustee under each of said trust deeds and on the same date the Circuit Court in Chancery for Saginaw County, Michigan, on application duly made, appointed the Detroit Trust Company, a corporation of Detroit, Michigan, trustee under each of said trusts in the place and stead of said Ernest A. Goff; that on February 3, 1914 said Ernest A. Goff as trustee conveyed to said Detroit Trust Company as trustee all his right, title and interest in and to said trust property pursuant to said trust deeds and the order of said court, and said deeds were recorded on March 2, 1914 in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 378 of deeds on pages 426 and 428; that said Detroit Trust Company accepted said trusts, duly qualified and is now acting as such trustee; that under the terms of said trust instruments, said trustee receives, collects and disburses said royalties. That the beneficiaries under said trusts are all residents of the states of Michigan and California.

(5) That at the 1923 session thereof, the Legislature of the State of Minnesota, passed Chapter 226, H. F. 29 of the Session Laws of that year, which was approved by the Governor on April 11, 1923, and a copy of which is hereto attached and marked Exhibit "4".

(6) That pursuant to said statute the defendants, constituting the Minnesota Tax Commission, required these plaintiffs to file reports [fol. 7] under section 3 of said statute, showing the royalty received during the calendar year 1923 from said mine, and these plaintiffs, on or before February 1st, 1924, filed said reports under protest and duress and threats of penalties, etc., and without admitting the validity of the statute or the liability for said tax, both of which were and are denied. That said defendants are threatening to assess

said taxes against these plaintiffs and their property interests and to certify such taxes in accordance with the provisions of said statute, so as to cause the same to become a lien upon the property interests of these plaintiffs and so cast a cloud upon the title of these plaintiffs, and these plaintiffs aver upon information and belief that said defendants propose to cause suits to be brought against these plaintiffs and their property interests on account thereof and cause a multiplicity of vexatious suits and to interfere with the property rights and privileges of these plaintiffs, unless restrained by the court.

(7) The plaintiffs further allege that the amount of tax which said defendants threaten to levy and collect for the year 1923 against each of the plaintiffs would be upwards of $3,000.00 exclusive of interest, penalties and costs and the amount of tax under said statute which said defendants would attempt to levy against each of the said plaintiffs for each successive year would be upwards of $3,000.00 exclusive of interest, penalties, and costs, and the amount involved in this suit and the value of each of the plaintiffs' interest in said Rust Mine, exclusive of interest, penalties and costs is in excess of $3,000.00.

(8) That said statute provides that such tax shall be due and payable on the first day of June, 1924, and annually thereafter on the first day of June and if not paid on or before that date, a penalty of 10% shall immediately accrue thereon and that the [fol. 8] tax shall be a specific lien from the time the same is due and payable upon all and singular the right, title and interest of the person to whom such royalty is payable and in and to the land, etc., and that on or before the 10th day of June in each year the State Auditor shall make his draft upon each person delinquent in the payment of such tax for the amount of taxes and penalty or penalties due thereon and place the same in the hands of the State Treasurer for collection and that the State Treasurer shall within 10 days after the receipt of the draft notify by mail the taxpayer of the amount thereof, and if not paid within 30 days after presentation shall deliver the same to the Attorney General, whose duty it shall be to bring an action thereon in the District Court of Ramsey County for the amount of such draft together with interest and costs and that such tax shall draw interest at the rate of 1% per month commencing 30 days after the same falls due, and the judgment of the court, when so obtained and properly docketed, shall be a lien upon all the right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed and that said lien shall continue without limitation with interest at the rate of 1% per month and the said property may be sold in satisfaction of such judgment.

(9) That plaintiffs allege that said Chapter 226 of the Laws of 1923 is unconstitutional and void for the following reasons, among others:

[fol. 9] (1) It denies to the plaintiffs as citizens and residents of Michigan the privileges and immunities of citizens of the several states

and of the State of Minnesota in violation of section 2 of Article 4 of the Constitution of the United States.

(2) It deprives non-resident lessors of Minnesota iron mines of property without due process of law, in violation of the Fourth and Fourteenth amendments to the Constitution of the United States, and in violation of Section 7 of Article 1 of the Constitution of Minnesota.

(3) It abridges their privileges and immunities, deprives them of property without due process of law and denies to them the equal protection of the laws, in violation of the Fourteenth amendment to the Constitution of the United States, and it violates their right guaranteed by the Fourth amendment to the Constitution of the United States to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

(4) The tax is not as nearly equal as may be, but is grossly discriminatory and in violation of Section 1 of Article 9 of the Constitution of Minnesota in force at the time of the execution of the lease of the Rust Mine.

(5) The property (subject matter of the tax) does not have a cash valuation and hence the tax is in violation of Section 1 of Article 9 of the Constitution of Minnesota in force at the time of the execution of the lease of the Rust Mine.

(6) The tax is not equalized and uniform throughout the state but is discriminatory and hence in violation of Section 1 of Article 9 of the Constitution of Minnesota in force at the time of the execution of the lease of the Rust Mine.

(7) The tax is not levied on all credits and personal property according to their true value in money, and hence is in violation of Section 3 of Article 9 of the Constitution of Minnesota in force at the time of the execution of the lease of the Rust Mine.

(8) The Act violates Sections 33 and 34 of Article IV of the Constitution of Minnesota prohibiting special laws and requiring that all such laws shall be uniform in their operation throughout the state.

(9) The act is retroactive, discriminatory and void for the following reasons:

(a) While the act did not become effective until April 11, 1923, yet it seeks to impose a tax on all royalties received during the calendar year 1923. Under the lease of the Rust Mine royalties are payable on the 10th days of April, July, October and January in each calendar year for all iron ore mined and shipped during the three months immediately preceding the first day of the month in which the payment shall become due. Therefore this act seeks to tax royalties received January 10, 1923, for ore mined and shipped [fol. 10] during the last three months of 1922, and also for royalties received April 10, 1923, for ore mined and shipped during the

first three months of 1923. If the act were otherwise valid (which is denied) it could not be made retroactive to cover royalties received prior to the date of its passage.

(b) The act not only seeks to impose a tax on royalties received prior to its passage, but it also seeks to impose a tax on royalties received during the calendar year 1923 which accrued during the year 1922, and hence prior to the first tax year under the act. Under the lease of the Rust Mine *the installment of royalties received on* or about January 10, 1923, was entirely for ore mined and shipped during the last three months of the calendar year 1922 and hence the act seeks to operate retroactively not only in covering royalties received prior to its passage but in taxing royalties which had accrued as rents or otherwise prior to the first tax year of the act.

(c) The retroactive feature of the act is not only void because it could not operate to impose a tax on transactions arising prior to its passage and prior to the first tax year under the act, but also because it would be discriminatory in that lessors under leases, wherein the royalties were payable in advance, would escape taxation on royalties received prior to January 1, 1923, on account of ore removed and shipped prior or subsequent thereto whereas lessors under leases such as that covering the Rust Mine would be subjected to a tax on royalties for ores removed and shipped during a like period.

(10) The tax is unwarranted by Section 17 of Article 9 of the Constitution of Minnesota in force at the time of the execution of the lease of the Rust Mine, because:

(a) That section does not authorize a tax on mineral lands and another tax on the earnings or rents derived therefrom, but rather authorizes a tax on one or the other if within the jurisdiction of the state;

(b) A tax is imposed by general law upon the property (mineral lands of plaintiffs) and to impose another tax on the earnings, rents or royalties derived therefrom while exempting rents or earnings from all other kinds of real estate, would not only be arbitrary discrimination, but would be double taxation.

(c) That said section seeks to authorize a tax on the property or upon the earnings, but not on both.

(d) The imposition of the general property tax on the Minnesota lands of plaintiffs precludes authority to impose another tax on the earnings, rents or royalties derived therefrom.

(e) While the Minnesota lands are within the state, the earnings, rents or royalties are not.
[fol. 11] (f) The tax is not as uniform as reasonably may be with the taxes imposed on similar property.

(11) That said statute and the amendment to the Constitution of Minnesota violate the Fourth and Fourteenth amendments to the Constitution of the United States, providing against unreasonable

searches and seizures aforesaid and providing that no state shall deprive any person of property without due process of law, nor make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person the equal protection of the laws, and also violates section 10 of article 1 of the Constitution of the United States providing that no state shall pass any law impairing the obligation of contracts. At the time of the execution of the lease of the Rust Mine in 1899, the Constitution of Minnesota provided that taxes shall be as nearly equal as may be, and that property subject to a tax, shall have a cash valuation, and that taxes shall be equalized and uniform throughout the state, and that taxes shall be levied on all credits and personal property according to their true value in money. In 1906, said Constitution was amended and a clause was substittuted therefor providing that taxes shall be uniform upon the same class of subjects. Said lease contains provisions which require the lessee to pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands thereby demised and on the iron ore mined thereon and on all improvements and personal property thereon, while the lease shall remain in force, and also provides that the lessee shall not permit or suffer said lands and property or any part thereof, to be sold at any time for any taxes or assessments, and that said lessee would protect the said lands and the improvements and iron ore in stock pile thereon from all mechanics' or laborers' liens, or other liens, and keep the title to the same free and clear from all clouds and incumbrances arising from such liens, in any way, because of its mining operations thereon or the use or occupation thereof by the lessee. Said lease runs for 50 years and three months and the royalties therein provided for were reduced and made less because of said agreement of the lessee to pay taxes. The amendment to th Constitution of Minnesota and the passage of said act of April 11, 1923, thereunder, impairs the obligation of plaintiffs' contract by hindering, diminishing and destroying the ability of the plaintiffs' lessee to perform and carry out the said contract and impairs the obligation of said contract.

(12) The subject matter of the tax is neither persons, property nor business within the territorial jurisdiction of the state.

(13) Because the situs of said royalties, whether before or after payment, is at all times outside of the State of Minnesota. The lease of the Rust Mine dated October 2, 1899, under which all of the royalties received by plaintiffs were paid, provides that the payments required to be made thereunder shall be made at and to George L. Burrows and Company's Bank at Saginaw, Michigan, or [fol. 12] at and to any other bank in the city of Saginaw, Michigan, or elsewhere in one of the United States as the lessors, their executors, administrators, or assigns from time to time may in writing designate. Neither plaintiffs nor their predecessors in title have at any time designated any other place of payment. If the receipt of royalties is the taxable res then the subject matter of the tax is

not within the jurisdiction of the State of Minnesota because all royalties received under the lease of the Rust Mine are received outside of the jurisdiction of Minnesota.

(14. The tax cannot be sustained as a tax against the person, because these plaintiffs (non-residents of the state) are not within the territorial jurisdiction of the state.

(15) The tax cannot be sustained as a tax against property for the following reasons among others:

(a) Royalties do not become property until paid to the lessor in money at his domicile.

(b) The situs of the credit representing unpaid royalties is at the domicile of the owner and it is not within the power of a state to tax a debt due from a resident to a non-resident of the taxing state.

(c) If the alleged property taxed is the credit representing unpaid royalties, it is invalid as a tax on property, also because it is not equal, and is not based on a cash valuation, and is not equalized and uniform, and is not imposed on all credits, and is not uniform upon the same class of subjects but is grossly discriminatory, and for the other reasons stated herein.

(16) The tax cannot be sustained as a tax against business, because plaintiffs are not engaged in any business in Minnesota.

(17) It cannot be sustained as an income tax because the Constitution of Minnesota does not authorize a tax on incomes; it is not denominated an income tax; it does not purport to be an income tax; and if it were a tax on income it would be void also because it is not general but is discriminatory and also because no provision is made in said act for a deduction for depletion or for a conversion of capital assets, but the act attempts to tax the entire amount of said royalties; and it would be void for the other reasons set forth in this protest.

(18) The act cannot be sustained as an excise tax for the reasons herein stated and for the reason that the plaintiffs are not exercising any privilege, occupation or business within the territorial jurisdiction of Minnesota and for the reason that while the Constitution of Minnesota as amended in 1906 and 1922 authorizes a tax on every person engaged in the business of mining or producing iron ore or other ores in Minnesota as an occupation tax, it does [fol. 13] not authorize an occupation or excise tax on the making of leases of ore or on the granting of permission to mine ore.

(19) The privilege of receiving in Michigan or elsewhere outside of Minnesota income or rents from real estate located in the latter state cannot be made the subject of an excise tax in Minnesota.

(20) As to these plaintiffs, it would result in treble taxation in that the mineral lands which they own are subjected to general property taxes in Minnesota; and the royalties for ore removed,

whether before or after payment, are subject to personal property tax, in the jurisdiction of the plaintiffs' domicile; and this act if valid would subject the rents or royalties to a third tax.

(21) Under the Minnesota statutes now in force and which were in force prior to the passage of Chapter 226, iron ore property is valued for taxation purposes at 50% of its actual value, while the highest valuation of any other property is 40% and farm lands are valued at only 33⅓% of their actual value, and the rate per cent of taxation is the same on the higher valuations as on the lower valuations and hence iron ore properties already are carrying an excessive portion of the burdens of taxation and Chapter 226 is an attempt to impose an additional, unequal and discriminatory burden on such property.

(22) It cannot be sustained as a sales tax because the Constitution of Minnesota does not authorize such a tax and such a tax would be void for want of uniformity and because it is discriminatory in that no tax is imposed on the sales price of any other property and is not imposed on the sales price of ore property except when said sales price is paid and received in the form of royalties.

(23) It is not proper classification but is arbitrary discrimination. The State has no power to classify for taxation, moneys owned by or due to a taxpayer based solely on the source from which said moneys are derived.

(24) If royalties from mining leases are rents paid for the enjoyment of real estate, then the act arbitrarily selects as the subject of the tax, rents derived from mineral land only (and in one part of the act it is apparently limited to rents or royalties derived from iron ore land) and arbitrarily exempts all other rents paid for the use of real estate such as office buildings, residences, apartments, stores, and mercantile establishments, factories, business places, farms, quarries and gravel pits and other mining lands, etc., and all other real estate in Minnesota. It arbitrarily selects rents received from one isolated class of real estate and arbitrarily exempts rents derived from all others.

(25) It does not provide for a hearing before assessment or payment in all cases as required by law.

[fol. 14] (26) It is an interference with and a burden upon interstate commerce in violation of Article 1, Section 8, of the Constitution of the United States.

(27) It impairs the obligation of contracts in violation of Section 10 of Article 1, of the Constitution of the United States.

(28) It is confiscatory.

(29) The subject of the act is not fully and accurately expressed in its title and hence it is in violation of Section 27 of Article 4, of the Constitution of Minnesota.

(30) If the tax could be sustained (which is denied) on the theory that the granting of the lease was a taxable privilege, it could only be sustained as to leases made subsequent to the passage of the law and it could not be made retroactive to cover the granting of a lease executed upwards of twenty-three years prior to the passage of the law.

(31) For the reasons herein stated the royalties are not and could not be the taxable res but are only the measure of the tax levied on something else and if that something else is the granting of the lease, then it follows that the state could not in 1923 impose a tax on the granting of a lease (such as that covering the Rust Mine) in 1899.

(32) If the tax could be sustained (which is denied) on the theory that permission to explore mine, take out and remove ore is a taxable privilege, then the tax is invalid as to plaintiffs because they have not granted such permission, are not exercising such permission and such permission or privilege was parted with by their predecessor in title upwards of twenty-three years before the passage of this act and the beneficiary of such permission or privilege is the lessee and not these plaintiffs. The statute is not retroactive and plaintiffs cannot be taxed now on account of a permission or privilege granted by their predecessor in title twenty-three years ago to a third party.

(33) The tax is discriminatory for the further reasons that:

(a) It is imposed on royalties received by lessors but is not imposed on that portion of the profit of operating fee owners which would be the equivalent of royalties received by them.

(b) It is imposed on royalties received by lessors who do not sell their leasehold interest but is not imposed on the sale price of expected future royalties of those lessors who sell their leasehold interest to their lessees or to others.

[fol. 15] (c) It is imposed on royalties received by lessors but is not imposed on equivalent payments received by fee owners who instead of executing instruments in the form of leases, execute contracts of sale of ore in place for a fixed price per ton.

(d) It is imposed on royalties received by lessors but is not imposed on equivalent payments received by fee owners who instead of executing instruments in the form of leases, sell mineral lands either on the lump sum basis or on the installment method.

(34) The act makes said tax due and payable on June 1, 1924 and imposes a penalty of 10 per cent if not paid on or before said date, but fails to state to whom said tax may be paid, and hence is indefinite and void.

(35) In so far as this act seeks to impose a personal liability for the payment of said tax against non-residents of the state of Minnesota it is unconstitutional and void.

(36) In so far as said act purports to authorize an action to recover the amount of said draft (tax and penalty) interest and costs against non-residents of the state of Minnesota, it is unconstitutional and void.

(37) In so far as said act purports to authorize a judgment to be rendered for the amount of said draft (tax and penalty) interest and costs against non-residents of Minnesota it is unconstitutional and void.

(10) That the plaintiffs although non-residents of the state of Minnesota and citizens of other states, could not remove any actions commenced by the State in said District Court of Ramsey County to the Federal Court inasmuch as the state is not a citizen within the meaning of the removal statutes and if plaintiffs should pay said tax they could not maintain a suit in the Federal or State Courts to recover it without the consent of the State of Minnesota as the State cannot be sued without its consent and no such consent has been or will be given and so far as the requirements of said statute are concerned, any suit so commenced by the State could not be removed to the Federal Court on any other grounds. That there is therefore no adequate remedy at law in the Federal or State courts and the plaintiffs having none such are entitled to equitable relief in the Federal court.

[fol. 16] (11) That this suit and restraining order and injunction applied for herein are brought in good faith and upon proper and reasonable grounds of contest as to the constitutionality and validity of said statute and the plaintiffs are entitled to the protection of this court as against the imposition of said alleged tax, penalties, interest and multiplicity of vexatious suits and the pretended lien and clouds upon their title and the imposition of the same would be inequitable and unjust even though the statute should be held valid.

Wherefore, the plaintiffs pray this Honorable Court for a judgment and decree against the defendants and each of them as follows:

(a) That the said Chapter 226 of the Laws of 1923 being entitled, "An Act providing for the Levy and Collection of a Tax on Royalty Received by the Owner of any Right, Title or Interest in Land Situate in this State for Permission to Explore mine, take out and remove Ore from the Same" be adjudged unconstitutional and void.

(b) That the court grant to the plaintiffs against the defendants and each of them individually and in their representative capacities as officers of the State of Minnesota a temporary restraining order to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges pursuant to Section 266 of the Judicial Code of the United States and that upon a final hearing to be succeeded in turn by a permanent injunction restraining and enjoining such defendants from acting under and in pursuance of or from in any way carrying out or enforcing the provisions of said Chapter 266 of the Laws of Minnesota of 1923 against these plaintiffs.

(c) That the court grant these plaintiffs such other and further [fol. 17] relief as to the court shall seem just and equitable.

Mitchell, Doherty, Rumbe, Bunn—Butler, Solicitors for Plaintiffs. Business Address; 1006 Merchants Nat. Bank Bldg., Saint Paul, Minn. Beaumont, Smith & Harris, Weadock & Weadock, M. J. Cavanaugh, of Counsel for Plaintiffs.

[fol. 18] Sworn to by George L. Burrows. Jurat. omitted in printing.

[fol. 19] EXHIBIT 1 TO BILL OF COMPLAINT

No. 21430

Filed Nov. 16, 1899, at 4 p. m., in Book "V" of Agrmts. Page 126

George L. Burrows et al:

to

Lake Sup. Con. Iron Mines

This indenture made this Second day of October, A. D. 1899, between George L. Burrows (widower) of Saginaw in the State of Michigan, Ezra Rust and Emma B. Rust, his wife of the City of New York in the State of New York, and Gilbert B. Goff and Emily A. Goff, his wife, of Edenville, in the State of Michigan, hereinafter called "the lessors" parties of the first part, and Lake Superior Consolidated Iron Mines, a corporation organized under the laws of the State of New Jersey, hereinafter called "the Lessee," party of the second part, Witnesseth as follows:

First. That the lessors, in consideration of the sum of one dollar to them paid by the lessee, the receipt whereof is hereby acknowledged and in further consideration of the covenants, conditions and provisions of this lease to be kept and performed by the lessee, do hereby let, demise and lease, unto the lessee for the term of fifty years and three months from and after the first day of October in the year of one thousand eight hundred and ninety-nine the following described lands and premises in the County of St. Louis and State of Minnesota, to-wit:

The Southeast quarter of the Southwest quarter of Section 35 in Township 58 North of Range 21 West of the fourth principal meridian; the South half of the Northeast quarter of Section 1, and the south half of the northwest quarter of Section 1, and the south half of the southeast quarter of Section 1; and the southeast quarter of the northwest quarter of Section 2; and the southeast quarter of the Northeast quarter of Section 12; and the northeast quarter of the southwest quarter of Section 12; all the said Sections 1, 2 and 12 being in Township 57 North of Range 21 West of the fourth principal meridian.

Together with all the mining rights, interests and estates of the lessors and each of them, in, of and to all of the said lands and premises, subject, nevertheless, to any and all rights of way evidenced by instruments now of record, through, over or across any part of the said lands and premises, granted to the Duluth Missabe & Northern Railway Company and to the Duluth, Mississippi River and Northern Railroad Company.

It is agreed by the parties hereto that the rights possessed by the lessee under said instruments shall not be terminated by the making of this lease, but shall continue and shall be the same as if this lease had been in force at the execution of said instruments.

The said lands and premises are demised to the lessee for the sole purpose of exploring for, mining, taking out and shipping therefrom the merchantable iron ore (as well as other minerals as hereinafter provided for) which is or hereafter may be found on, in or under the said lands, with the right to the lessee to construct all buildings and to make all excavations, openings, ditches, drains, railroads, wagon-roads, and all other improvements which are or may become necessary or suitable for the mining or removing of the iron ore [fol. 20] therefrom and the carrying on of mining operations thereon; and the right to cut and use all the timber other than pine-timber which may be upon the said lands, free and without charge, so far as may become necessary for fuel or in the construction of buildings required in the operation of any mine upon the said lands, and for drains, tramways, supports or shafts on or within any such mine, or in connecting the same with any lines of railway over which the said ore may be transported. The term "Merchantable ore" as used in this lease shall be taken to mean such ore as shall be merchantable from time to time as the work of mining progresses.

Second. The lessee hereby covenants and agrees to pay to the lessors a royalty on all iron ore mined and shipped from the said lands while this lease shall remain in force, as follows:

For all iron ore mined and shipped prior to the first day of January A. D. 1900, the royalty shall be at the rate of thirty cents for each gross ton, and for all iron ore mined and shipped on or after the first day of January A. D. 1900, the royalty shall be at the rate of twenty-five cents for each gross ton. As to all iron ore mined and shipped before January 1, 1900, the lessee will pay the royalty to the lessors on or before the twenty fifth day of each month for all ore mined and shipped during the calendar month preceding the first day of the month in which the payment is to be made. As to all iron ores mined and shipped on or after the first day of January, 1900, the royalty shall be due and payable on the tenth days of April, July, October and January in each calendar year (which days are hereinafter called "quarter days"). The payment on each quarter day shall be for the full amount of ore mined and shipped from the said lands during the three months immediately preceding the first day of the month in which the payment shall become due. The premises above described being under lease from the lessors to the lessee herein under instrument of lease reserving royalty at the rate

of thirty cents per gross ton upon an agreed minimum output of twenty thousand tons in each year, and which lease is surrendered simultaneously with the execution and delivery of this instrument, the lessee further covenants that during the year 1899 it will have mined and shipped from the said lands at least twenty thousand gross tons of iron ore, or, in case the ore so mined and shipped in the year 1899 shall be less than twenty thousand tons, the lessee will pay to the lessors advance royalty in such sums as shall, together with the amount paid as royalties for ore actually shipped, amount to six thousand dollars.

The lessee further covenants that in each year during the existence of this lease, after January 1, 1900, it will mine and ship from the said lands at least two hundred thousand gross tons of iron ore as an agreed minimum output, or, in case in any one or more of such years the lessee shall not actually ship from the demised premises the full quantity of said agreed minimum output, the lessee will, nevertheless, pay to the lessors advance royalty, to be treated and considered as ground rent, in addition to the royalty paid for iron ore actually shipped during that year such sum as shall, together with the amount paid as royalty for iron ore actually shipped during the said year, amount to Fifty thousand dollars.

Said advance royalties or ground rent shall be paid quarterly at the times and in the manner herein before provided for the payment of royalties for ore actually shipped.

[fol. 21] If in any quarter year the lessee shall ship less than one-quarter of the agree- minimum output for that year, and in a subsequent quarter of that or of any later year shall ship more than the agreed minimum output for such subsequent quarter, the lessee, in making payment of the royalty on such excess, shall be entitled to credit at the rate of 25 cents per ton up to the amount of royalty previously paid on ore not shipped; and this provision shall apply from quarter to quarter and from year to year until such advance royalty shall be exhausted. If on December 31, 1899, the lessee shall have paid, under the said former lease or under this lease, royalty for a greater number of tons of iron ore than shall then have been actually shipped, the lessee shall be entitled to credit for the amount of such advance royalty at the rate of twenty five cents per ton in the payment of royalty in any subsequent quarter or quarters on iron ore shipped in that quarter in excess of that quarter's minimum.

The obligation of this lease to pay advance royalties as aforesaid shall continue in force without regard to the quantity or quality of iron ore existing on the premises during the full term of this lease or until the same shall be terminated or surrendered or assigned in the manner herein provided; and in case of an assignment of the said lease the obligation to mine or pay for such agreed annual minimum output, as well as all other provisions of the lease, shall bind the assignee as fully as the lessee is bound hereby.

At the time of making each payment of royalty the lessee shall transmit to the lessors an exact statement of the amount of iron ore shipped from the demised premises for the period of which royalty is then paid.

Third. The iron ore shipped from the said premises by the lessee shall be weighed by the railway company transporting the same, and the weights so ascertained by the railway company shall prima facie determine the quantity as between the parties hereto. The lessee will furnish the lessors monthly statements showing the said railway weights of ore shipped and the lessors shall have the right by themselves or their duly authorized agents to inspect, view and test the correctness of the railway company's weights at any time and in such manner as it may seem proper to adopt, it being understood that any errors in these respects when ascertained shall be cognizable and corrected, and any such differences shall be settled and paid for upon the next regular quarter day. And the lessee will, on application, at all reasonable times furnish the lessors with copies of analyses and all information connected with the exploration or development work upon said demised premises, and the lessors shall have the right by themselves or their duly authorized agents to enter upon the demised premises at any time or times to inspect or survey the same and to measure the quantity of ore which shall have been mined thereon or shipped therefrom, provided they shall not unnecessarily or unreasonably hinder or interrupt the operation of the lessee.

Fourth. The lessee covenants to conduct all its mining operations on the said lands in a good workman like manner and in accordance with the requirements of good engineering, and so as not to do or cause or permit any unnecessary or unusual waste or injury to the said premises or inconvenience or hindrance in the subsequent operations of the mines thereon.

[fol. 22] Fifth. The lessee further covenants to pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands hereby demised and on the iron ore mined thereon, and on all improvements and personal property thereon while this lease shall remain in force, and to furnish the lessors with duplicate receipts showing the payment of all such assessments or taxes; provided, however, that the lessee shall always have the right to contest in the courts or otherwise the validity of any such tax or assessments in case it shall deem the same unlawful, unjust, unequal or excessive, or to take such other steps or proceedings as it may deem necessary to secure a cancellation, reduction, readjustment or equalization thereof before it shall be required to pay and discharge the same or any part thereof; but, provided further that the lessee shall not permit or suffer said lands and property or any part thereof to be sold at any time for any taxes or assessments. And upon the termination of this lease, by surrender or otherwise as herein provided, the lessee will peaceably surrender possession of the said lands to the lessors.

The lessee covenants that while this lease shall remain in force and until it is surrendered or assigned in manner herein provided, it will protect the said lands and the improvements and iron ore in stock pile thereon from all mechanic's or laborer's liens or other liens and keep the title to the same free and clear from all clouds and en-

cumbrances arising from such liens in any way because of its mining operations thereon or the use and occupation thereof by the lessee, its agents, servants, employees or contractors.

Sixth. The lessor covenant and represent that the said demised premises are now owned as follows, to-wit: That Gilbert B. Goff is the owner of an undivided one-third interest in the minerals upon the said premises, and that, subject only to the said right of the said Gilbert B. Goff, the said premises are owned in fee, one-half thereof by the said George L. Burrows and one-half thereof by the said Ezra Rust.

The several payments required to be made hereunder shall be made at and to George L. Burrows & Company's bank at Saginaw, Michigan, or at and to any other bank in the City of Saginaw, Michigan, or elsewhere in one of the United States as the lessors, their executors, administrators or assigns from time may in writing designate, and the bank or banks so designated shall be deemed the agent or agents of the lessors respectively for the purpose of receiving, collecting and receipting for such payments.

The payments by this lease required to be made by the lessee shall be made in gold coin of the United States of the present standard of weight and fineness.

Seventh. It is Mutually covenanted between the parties, and this lease is granted and accepted upon condition, that the lessee shall have the right to at any time upon thirty days' notice to terminate this agreement and lease, by giving written notice in the manner hereinafter provided to the lessors, their heirs, executors, administrators or assigns, who will in such case acknowledge in writing the receipt of such notice; and this lease shall terminate thirty days after the giving of such notice, whether the same shall be so acknowledged or not.

[fol. 23] All arrearages and sums, including taxes, which shall be due and payable under this lease up to the time of its termination as set forth in the said notice, must and will be paid by the lessee within thirty days after such termination; and the lessee upon such termination must and will forthwith execute and record in the office of the Register of Deed- of St. Louis County, Minnesota, a formal relinquishment of such lease.

Said notice of termination of this lease may be given by registered letter mailed from any Post Office in the United States, postage prepaid, and addressed to the lessors or their heirs, executors, administrators or assigns at their respective last known places of residence.

And it is further agreed that the lessee shall have the right to assign this lease or to contract with others to work any mine or mines which now are or hereafter may be discovered upon the said lands, or to sub-contract, sublet the same at its option with the same rights and privileges as are herein granted to the lessee, it being expressly understood that any such assignment contract, sub-contract or sublease shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease until and unless the lessors shall in writing consent thereto.

Eighth. This lease is granted and accepted upon condition that if the royalty hereby reserved or the advance royalty or ground rent hereby provided for and agreed to be paid or any part thereof be and remain unpaid after the days and times above specified, and if the same shall remain in default for a period of sixty days, or in case the lessee shall fail to keep any of the covenants or conditions herein expressed to be kept and performed by it, and such failure shall continue for sixty days after the receipt by it of written notice from the lessors specifying the default, neglect and failure complained of, then and from thenceforth and in either of the said events, but not otherwise, it shall be lawful for the lessors, at their option to terminate this lease and to take possession of the said leased premises with or without any previous process whatever, to re-enter and have and possess the same as fully as if no lease had been given to the lessee, and the said lessee and all parties claiming under it shall be wholly excluded therefrom, and this lease shall become and be wholly void and at an end subject to the provisions of Article Nine hereof; and the lessors reserve and at all times shall have, possess and hold a lien for all unpaid balances due hereunder upon all ore mined upon the said premises and upon all improvements made upon the said premises by the lessee.

Ninth. It is mutually covenanted that upon the termination of this lease, whether by the acts of the parties or either of them or by expiration of the term, the lessee shall have sixty days in which to remove all engines, tools, machinery, railway tracks or structures erected or placed by it upon the said premises, provided that all taxes, royalties and other dues shall have been paid and all other conditions performed. But the lessee shall not remove or impair any supports placed in the mines upon such premises, nor any timber or framework necessary to the use or maintenance of the shafts or the approaches to the mines or the tramways within the said mines; and on [fol. 24] failure within the said sixty days to so remove such property all of the same shall belong to and become the property of the lessors.

Tenth. In case ores or minerals other than iron ores shall be discovered upon the said demised premises the lessee shall be and hereby is expressly granted the right to mine and ship the same and the royalty thereon to be paid to the lessors shall be thirty-three per centum of the market value or selling price of all such ores or minerals at the market or markets therefor, less all transportation charges, which transportation charges shall first be deducted from such market value or selling price and retained by the lessee; and such royalty shall be due and payable at the same times and in the same manner that the royalty on iron ores shall be due hereunder, and the quarterly reports of the quality, grade, kind and quantity of such other ores and minerals shall be made at the same times and in the same manner as reports concerning iron ore are required to be made hereunder.

Eleventh. All covenants, conditions and provisions of this lease shall run with the land and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns, of the lessors and lessee respectively.

In Witness Whereof the lessors have hereunto set their respective hands and seals, and the lessee has caused these presents to be executed in its corporate name by its President or Vice-President and its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

This lease is executed in quadruplicate and the four papers thus executed shall be deemed but one instrument.

Geo. L. Burrows (Seal), Ezra Rust (Seal), by Geo. L. Burrows, His Attorney-in-fact. Emma B. Rust (Seal), by Geo. L. Burrows, Her Attorney-in-fact. Gilbert B. Goff (Seal), Emily A. Goff (Seal), Lake Superior Consolidated Iron Mines, by F. T. Gates, Pres. (Lake Superior Consolidated Iron Mines Corporate Seal, 1893.)

Attest: Chas. E. Schiede, Secretary.

Signed, Sealed and Delivered in the presence of: As to the lessors: L. A. Burrows, Fred H. Potter; as to lessee: Geo. Welwood Murray, Allen W. Johnson.

U. S. Rev. Stamp, $1.00, Cancelled.

[fol. 25] STATE OF MICHIGAN,
County of Saginaw, ss:

On this Eleventh day of November A. D. 1899 before me a Notary Public within and for said county, personally appeared George L. Burrows, to me known to be the person described in and who executed the foregoing and within instrument and lease and acknowledged that he executed the same as his free act and deed.

Latham A. Burrows, Notary Public. (Seal of Latham Avery Burrows, Notary Public, Saginaw Co., Mich.)

STATE OF MICHIGAN,
County of Saginaw, ss:

On this eleventh day of November A. D. 1899, before me a Notary Public within and for said county, personally appeared George L. Burrows to me known to be the person who executed the foregoing instrument in behalf of Ezra Rust and Emma B. Rust, his wife, and acknowledged that he executed the same as the free act and deed of said Ezra Rust and Emma B. Rust, his wife.

Latham A. Burrows, Notary Public. (Seal of Latham Avery Burrows, Notary Public, Saginaw Co., Mich.)

STATE OF MICHIGAN,
County of Saginaw, ss:

On this eighth day of November A. D. 1899, before me a Notary Public within and for said county, personally appeared Gilbert B. Goff, to me known to be the person described in and who executed the foregoing and within instrument and lease and acknowledged that he executed the same as his free act and deed.

Latham A. Burrows, Notary Public. (Seal of Latham Avery Burrows, Notary Public, Saginaw Co., Mich.)

[fol. 26] STATE OF MICHIGAN,
County of Saginaw, ss:

On this eighth day of November A. D. 1899, before me a Notary Public in and for said county personally appeared Emily A. Goff to me known to be the person described in and who executed the foregoing and within instrument and lease and acknowledged that she executed the same as her free act and deed.

Latham A. Burrows, Notary Public. (Seal of Latham Avery Burrows, Notary Public, Saginaw Co., Mich.)

STATE OF NEW YORK,
County of New York, ss:

On this thirteenth day of November A. D. 1899, before me a Notary Public within and for said county and State, personally appeared Fred T. Gates to me personally known, who being by me duly sworn did say that he is the president of the Lake Superior Consolidated Iron Mines, a corporation duly existing under the laws of the State of New Jersey, and that the seal affixed to the foregoing instrument and lease is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Fred T. Gates duly acknowledged said instrument to be the free act and deed of said corporation.

John Bensinger, Notary Public in and for the County and State of New York. (Seal of John Bensinger, Notary Public, Kings Co., N. Y.)

[fol. 27] EXHIBIT 4 TO BILL OF COMPLAINT

Chapter 226, H. F. No. 29

An act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this State for permission to explore, mine, take out and remove ore from the same.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Tax on Iron Ore Royalties—Rate.—There shall be levied and collected upon all royalty received during the year end-

ing December 31, 1923, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this State, a tax of six (6) per cent.

Sec. 2. Definitions.—For all purposes of this act the word "royalty" shall be construed to mean the amount in money or value of property received by any person having any right, title or interest in or to any tract of land in this State for permission to explore, mine, take out and remove ore therefrom; and the word "person" shall be construed to include individuals, copartnerships, associations, companies and corporations.

Sec. 3. Annual Reports to Tax Commission.—Every person to whom royalty is paid shall on or before the first day of February, 1924, and annually thereafter on or before the first day of February of each year, make and file with the Minnesota Tax Commission a report verified by the person making the same and setting forth the amount of royalty received by such person during the preceding calendar year, and such other information as said commission may require.

Sec. 4. Contents of Reports.—It shall be the duty of every person paying royalty, on or before the first day of February, 1924, and annually thereafter on the first day of February in each year, to make and file with the Minnesota Tax Commission, a report covering the preceding calendar year, verified by the oath of the person making the same and setting forth:

[fol. 28] 1. The number of tons mined from each tract of land for the right to mine and remove ore on which such person pays royalty.

2. The amount of royalty paid on each tract of land separately.

3. The name and postoffice address of each person to whom royalty is paid, and

4. Such other information as said commission may require.

Sec. 5. Tax Commission to Assess Tax.—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 3 of this act it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the State auditor and a duplicate thereof with the State treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

A person subletting land for the use of which he received royalty

shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received.

Sec. 6. Penalties for Non-payment.—If any person subject to the tax provided by this act shall fail to make the report provided for in Section 3 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be [fol. 29] added to and collected with such tax. The tax commission shall in such case determine the amount of the ores mined or produced, together with the royalty paid thereon and shall fix the tax due thereon from such person, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such royalty. Such findings shall stand in the place of the report required by this act to be made by such person and shall be in all courts of the State, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. Date of Payment.—Such tax shall be due and payable on the first day of June, 1924, and annually thereafter on the first day of June, and if not paid on or before that date a penalty of ten (10) per cent shall immediately accrue thereon.

Sec. 8. Tax a Lien on Lands and Ore.—The situs of royalty for all purposes of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the same is due and payable upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid.

Sec. 9. Auditor to Make Draft.—On or before the tenth day of June in each year the state auditor shall make his draft upon each person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

[fol. 30] Sec. 10. Treasurer to Collect Tax.—The state treasurer within ten days after the receipt of the draft mentioned in Section 9 of this act shall notify by mail the taxpayer designated therein of the amount thereof and if not paid within thirty days after presentation shall deliver the same to the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey County for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due; and the judgment of the court when so obtained

and properly docketed shall be a lien upon all right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one per cent per month and the said property may be sold in satisfaction of such judgment in the same manner as provided by law for the sale of property upon execution.

Sec. 11. Penalties for False Returns.—Any person who for the purpose of evading the payment of the tax herein provided or any part thereof makes any false return or report shall in addition to the tax provided by this act pay a penalty of fifty (50) per cent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act shall be guilty of perjury and upon conviction thereof shall be punished therefor as provided by law.

Sec. 12. Records to be Open to Inspection of Tax Commission—Violations and Penalties.—All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person paying or receiving royalty on ore mined in this state, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any such person shall neglect or refuse on request of the Minnesota Tax Commission access to the pap--- and books aforesaid, he shall be guilty [fol. 31] of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. Taxes to be Paid Into General Revenue Fund.—All taxes assesses, levied and collected under the provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 11, 1923.

[fol. 32] EX. 2 TO BILL OF COMPLAINT

I, Ezra Rust, of the City of Saginaw, in the County of Saginaw and State of Michigan, do hereby make, publish and declare this to be my last Will and Testament, intending hereby to dispose of all my worldly estate of which I shall be possessed at the time of my decease, hereby revoking all Wills and all Codicils thereto, heretofore made by me.

First. I direct the payment of all my just debts as soon as practicable, after my death.

Second. I give, devise and bequeath:

(1) To Nicea Howard, Vera Howard and Jesse Howard, of Providence, Rhode Island, and children of Mrs. Anna Howard, formerly Anna Manning, who lived in my family for several years, each the sum of Five Thousand ($5,000) Dollars.

(2) To my niece Mrs. Laura Leonard of Chicago, Illinois, the sum of Five Thousand ($5,000) Dollars.

(3) To the heirs-at-law of my niece, Mrs. Georgia C. Moore, deceased, late of Flushing, Long Island, the sum of Five Thousand ($5,000) Dollars, share and share alike between them.

(4) To my niece, Miss Rosita Birkbeck, of Flushing, Long Island, the sum of Five Thousand ($5,000) Dollars.

(5) To my cousin, Mrs. Carrie E. Tew, of Pasadena, California, the sum of One Thousand ($1,000) Dollars.

(6) To my cousin, Mrs. Florence E. Vroom, the sum of One Thousand ($1,000) Dollars.

(7) To my cousin, Mrs. Carrie E. Pierce of Monmouth, Illinois, the sum of One Thousand ($1,000) Dollars.

(8) To my nephew, George Rust, of Oakland, California, the sum of Five Thousand ($5,000) Dollars.

(9) To Anna E. C. Brater, commonly known as "Lizzie" Brater, who is and has been employed in my house in Saginaw, Michigan, for many years, the sum of Five Thousand ($5,000) Dollars.

(10) To Anna Raschmann, who is now and has been employed in my house in Saginaw, Michigan, for many years, the sum of One Thousand ($1,000) Dollars.

(11) To James Mercier, who is and has been employed in my household for many years, the sum of One Thousand ($1,000) Dollars.

(12) To Henry J. Rumsey, who is now and has been employed in my household for many years, the sum of Two Thousand ($2,000) Dollars.

(13) To Charles J. Reynick, who is now employed in my office, the sum of Five Thousand ($5,000) Dollars.

(14) To Margaret M. Sager, formerly my bookkeeper, the sum of One Thousand ($1,000) Dollars.

(15) To Mrs. Emily J. Mather of St. Clair, Michigan, the sum of Two Thousand Five Hundred ($2,500) Dollars.

(16) To Mrs. Kate E. Rust, Mrs. Mariette Rust and Mrs. Katherine Rust Anstice, widow and daughters respectively of my nephew, Ezra Gardner Rust, the sum of Twenty Thousand ($20,000) Dollars in all, share and share alike between them, individually and not as a class.

(17) To my niece, Mrs. Elizabeth W. Rust of Noblesville, Indiana, the sum of Five Thousand ($5,000) Dollars.

(18) To Mrs. Mary E. Mather, of South Pasadena, California, the sum of Two Thousand ($2,000) Dollars.

(19) To Mrs. Rhea E. Peirsol, of Ann Arbor, Michigan, the sum of Five Thousand ($5,000) Dollars.

(20) To Harold E. Covert, of Ann Arbor, Michigan, the sum of Five Thousand ($5,000) Dollars.

[fol. 33] To St. John's Episcopal Church, of Saginaw, West Side, Michigan, the sum of Five Thousand ($5,000) Dollars.

(22) I give and bequeath to the City of Saginaw, a municipal corporation, the sum of Ten Thousand ($10,000) Dollars, to be used for the repair, improvement or maintenance of Ezra Rust Park

under the direction of the proper city authorities. It was once my intention to devote a larger sum to this purpose, but under changed conditions I have decided to limit my gift to the amount already invested in said park, and this comparatively small bequest toward its repair, improvement and maintenance.

It is my desire and intention that none of the foregoing legacies in this paragraph of this Will, shall fail or lapse by reason of the death of any of the legates named by me prior to my decease; but in case of the death of such legatees or any of them, before me, the heirs of such legatee or legatees so dying, in the absence of any testamentary disposition having been made, shall take the gift in the same manner as though it had become a part of the estate of such legatee or legatees, but if any testamentary disposition shall have been made by such legatee or legatees of his or her estate, then the same shall apply to the gift or legacy herein contained, the same as if such legatee or legatees had died subsequent to my death and the payment of such legacy.

Third. I hereby give, devise and bequeath:

(1) To Ellen S. Slyne, now in Saginaw, the sum of Five Thousand ($5,000) Dollars, should said Ellen S. Slyne survive me.

(2) I give and bequeath to "Bessie" Green, of 820 Hill street Ann Arbor, Michigan, the sum of Two Thousand Five Hundred ($2,500) Dollars, should said Bessie Green survive me.

(3) I give and bequeath to Miss Ida L. Sweet, of the City of New York, the sum of One Thousand ($1,000) Dollars, should said Ida L. Sweet survive me.

Fourth. I direct that the legacies contained in the foregoing Second and Third Paragraphs of this Will shall be paid without interest at any time within one year after my decease, as may be convenient, and if not paid within one year, then the same shall bear interest from one year after my decease, until paid.

Fifth. I hereby give, devise and bequeath to my wife, Estelle Rust, James G. McPherson and Charles J. Reynick, all of the City of Saginaw, Michigan, as Trustees, and to their successors in said Trust, all my right, title and interest of every name, nature and description, in and to the Southeast Quarter (SE¼) of Southwest Quarter (SW¼) of Section 35, in Township 58 North of Range 21 West, of the fourth principal meridian; the South Half (S½) of Northeast Quarter (NE¼) of Section One (1), and the South Half (S½) of the Northwest Quarter (NW¼) of Section One (1), and the South Half (S½) of the Southeast Quarter (SE¼) of Section One (1); and the Southeast Quarter (SE¼) of the Northwest Quarter (NW¼) of Section Two; and the Southeast Quarter of the Northeast Quarter of Section Twelve and the Northeast Quarter of the Southwest Quarter of Section Twelve; all said Sections One, Two and Twelve being in Township 57 North of Range 21 West of the fourth principal meridian, all in the County of St. Louis, State of Minnesota, together with all my right, title and interest in and to one certain mining lease thereon, dated October 2, 1899,

between George L. Burrows, Ezra Rust and Emma B. Rust, Gilbert B. Goff and Emily A. Goff, and Lake Superior Consolidated Iron Mines, a corporation organized under the laws of the State of New Jersey, and the right to collect, receive and recover all rents, royalties and income thereunder from said Lake Superior Iron Mines, its successors or assigns, together with all minerals, mining rights and mineral interest of every kind, name, nature and description, arising or growing out of or connected with said land above described, and the minerals therein, hereinafter for convenience called "Ezra Rust Mining Property," to be held in Trust, however, during the lives of my said wife, Estelle Rust, and my adopted daughter, Maxine Rust, and the lifetime of the survivor of them hereby giving and granting to said trustees and their successors in said trust, full power and authority to carry out the said trust for the following purposes, viz:

(1) To do all acts proper in the management and care of said trust property, and to deduct the expenses of said care and management, and their compensation as trustees;

(2) To pay to my said wife, Estelle Rust, for and during her lifetime, all the net rents, royalties and income from an undivided one-half of said Ezra Rust Mining Property, with all convenient dispatch, after the receipt of the same by them, and upon her death to pay, turn over and deliver to her heirs-at-law, or such legatees or devisees as she may in her last Will and Testament name, to receive the same during the lifetime of this trust, all the net rents, royalties and income from said undivided one-half of said Ezra Rust [fol. 34] Mining Property, and upon the termination of said trust, turn over and deliver to the heirs-at-law of said Estelle Rust, or legatees or devisees designated in the last Will and Testament of said Estelle Rust, to receive the same, said undivided one-half interest in said Ezra Rust Mining Property.

(3) Said Trustees and their successors in said Trust shall, during the lifetime of this trust, turn over and pay all money, rents, royalties and income from an undivided one-half of the said Ezra Rust Mining Property above described, to the trustees of the Maxine Rust Trust created in paragraph Six of this Will and to their successors in that Trust. The said rents, royalties, moneys, and income from said Ezra Rust Mining Property so paid over to said Trustees and said Maxine Rust Trust, and to their successors in said trust, shall thereupon become and be a part of the said Maxine Rust Trust, and be governed by the terms of said Trust, and be disposed of to the persons and in the manner hereafter designated in the provisions for said Maxine Rust Trust.

At the termination of the trust covering the said Ezra Rust Mining Property, I hereby give, devise and bequeath the said undivided one-half of the said Ezra Rust Mining Property, to the lawful issue of the body of my adopted daughter, Maxine Rust, and their heirs, in fee simple, share and share alike between them if there be more than one.

If my said adopted daughter, Maxine Rust, die leaving no lawful issue of her body her surviving, then and in such case at the termination of said Ezra Rust Mining Property Trust, said undivided one-half of the corpus of the said trust shall go to, become the property of, and is hereby bequeathed to the persons next hereinafter in this paragraph designated, and to them and their respective heirs, in fee simple, viz:

(1) One share (one-ninth), to Mrs. Laura Leonard.

(2) One share (one-ninth), to Mrs. Ida McPherson, wife of James G. McPherson.

(3) One share (one-ninth), to my niece, Miss Rosita Birkbeck.

(4) One share (one-ninth), to my nephew, George Rust.

(5) One share (one-ninth), to Mrs. Kate E. Rust, Mrs. Mariette Rust and Mrs. Katherine Rust Anstice, widow and daughters, respectively, of my nephew, Ezra Gardner Rust, share and share alike between them, individually and not as a class.

(6) One share (one-ninth), to Charles C. Sturtz.

(7) One share (one-ninth), to Mrs. Rhea E. Peirsol.

(8) One share (one-ninth), to Harold E. Covert.

(9) One share (one-ninth), to the husband, if any of my said adopted daughter, Maxine Rust, if he be living with her at her death, share and share alike between them, individually and not as a class in fee to them and their heirs respectively. If Maxine Rust leave no husband living with her at her death, said share provided for her husband shall be divided between the other eight shares above designated.

Sixth. I hereby give, devise and bequeath to said Estelle Rust, James G. McPherson and Charles J. Reynick and their successors in this Trust, and undivided one-half of all the rest, residue and remainder of my personal estate, including all moneys, rents, royalties and income from said undivided one-half of said Ezra Rust Mining Property, as paid over to them, as provided for in the fifth paragraph of this Will, In Trust, however, for the following purposes, viz.

(1) To collect from, received and receipt for to the Trustees of said Ezra Rust Mining Property, and their successors in said Trust all the moneys, royalties, rents and income of every name, nature and description, arising, accruing or derived from the undivided one-half of the said Ezra Rust Mining Property hereinbefore described.

(2) To take possession of, hold, manage and care for all money and personal property covered by this Trust, with full power and authority to sell and exchange any or all stocks and bonds and other personal property covered by this Trust.

(3) To pay all taxes, insurance and expenses of every name, nature and description, of caring for and managing all of the property covered by this Trust, including compensation to said Trustees and their successors.

(4) To invest, re-invest and keep invested in income producing securities and property, all moneys, rents, royalties, proceeds, income and personal property coming into their hands from the property covered by this trust, and from the said Trustees of said Ezra Rust Mining Property.

[fol. 35] (5) To pay out of the money and personal property coming into their hands under this Trust, to the legal Guardian of my said adopted daughter, Maxine Rust, until she shall attain her twenty-first year, all such sums of money as from time to time may be necessary to educate, support and maintain my said adopted daughter, Maxine Rust, liberally, according to her station in life, and shall pay:

On July 28, 1926, that being her twentieth birthday, to her guardian, out of the money and personal property in their hands, the sum of Fifty Thousand ($50,000) Dollars, with the discretionary power in them to increase said sum to One Hundred Thousand ($100,000) Dollars.

And shall pay to said Maxine Rust as follows, viz:

On the 28th day of July, 1936, her thirtieth birthday, the sum of One Hundred Thousand ($100,000) Dollars;

On the 28th day of July, 1941, her thirty-fifth birthday, the sum of One Hundred Thousand ($100,000) Dollars;

On the 28th day of July, 1946, her fortieth birthday, One Hundred Thousand ($100,000) Dollars.

On the 28th day of July, 1950, her forty-fourth birthday, all the residue of the trust property covered by this paragraph of this Will, and thereafter shall pay to her during her lifetime all other moneys coming into their possession for her benefit, as rents, royalties or income from said Ezra Rust Mining Property, or otherwise.

In the event that my said adopted daughter, Maxine Rust, shall die leaving lawful issue of her body, her surviving, such issue shall take the place of said Maxine Rust in the ownership and distribution of the property covered by this Maxine Rust Trust, and the same shall vest in said issue at the death of said Maxine Rust, share and share alike between them. If said death shall occur before the termination of said Ezra Rust Mining Property Trust, the Trustees of this Trust, and their successors in this Trust, shall during the existence of said Ezra Rust Mining Property Trust, continue to collect and receive the rents, royalties and income therefrom, and pay the same over to said issue of said Maxine Rust.

In the event of the death of my said adopted daughter, Maxine Rust, without leaving lawful issue to her body her surviving, then and in such case, the rents, moneys, income and royalties from said undivided one-half of said Ezra Rust Mining Property, shall during the lifetime of said Trust, be paid over by my said Trustees and

their successors as soon as practicable after the receipt of the same, to the following named persons, viz:

(1) To my niece, Mrs. Laura Leonard.
(2) To Mrs. Ida McPherson, wife of James G. McPherson.
(3) To my niece, Miss Rosita Birkbeck.
(4) To my nephew, George Rust.
(5) To Mrs. Kate E. Rust, Mrs. Mariette Rust and Mrs. Katherine Rust Anstice, widow and daughters respectively of my nephew, Ezra Gardner Rust, one share, share and share alike, between them, individually, and not as a class.
(6) To Charles C. Sturtz.
(7) To Mrs. Rhea E. Peirsol.
(8) To Harold E. Covert.
(9) To the husband, if any, of my said adopted daughter, Maxine Rust, if he be living with her at her death; share and share alike between them, individually and not as a class, until the expiration of said trust by the death of the survivor of my said wife and adopted daughter, and upon the termination of said mining trust said persons above named shall be entitled to receive the residue of said one-half of said Ezra Rust Mining Property. Upon the death of my said adopted daughter, Maxine Rust, without leaving lawful issue her surviving, all other property covered by the Maxine Rust Trust, shall go to and become the property of and is hereby bequeathed to the persons last above named, share and share alike between them, individually and not as a class. If said Maxine Rust leave no husband living with her at her death, said share provided for her husband shall be divided between the other eight shares above designated.

In case of the death of any of the last above named legatees the heirs of such legatee or legatees in the absence of testimentary disposition by them, shall take the gift in the same manner as though it had become a part of the estate of such legatee or legatees, but if any testimentary disposition shall have been made by such legatee or legatees of his, her or their estate, then the same shall apply to the gift or legacy herein contained.

[fol. 36] Seventh. Excepting and reserving herefrom, the real estate herein above described as the Ezra Rust Mining Property, I hereby give, devise and bequeath to my said adopted daughter, Maxine Rust, and her heirs forever, an undivided one-half of all real estate of which I may die seized and possessed, wherever the same may be situated, including an undivided one-half in my homestead in the City of Saginaw, subject to all homestead rights therein.

Eighth. Excepting and reserving herefrom the real estate herein above described as the Ezra Rust Mining Property, I hereby give, devise and bequeath to my said wife, Estelle Rust, and her heirs forever, an undivided one-half of my real estate, and an undivided one-half of all the residue of my personal property. The provisions herein made for my said wife, Estelle Rust, are in lieu of dower, thirds and statutory rights in real or personal property in her favor.

Ninth. I further will and direct that in the event of any child or children being born to myself and my wife, Estelle Rust, and such child or children surviving me, it or they shall have the same rights in my estate both real, personal and mixed, as if I had died intestate, and the interests of my said wife and said adopted daughter, Maxine Rust, and all beneficiaries herein named, except beneficiaries named in the Second and Third paragraphs of this Will, will be reduced pro rata thereby.

Tenth. All heirs-at-law not herein specifically mentioned are hereby intentionally omitted from participation in my estate.

Eleventh. In the event of the death, total incapacity to act, or refusal to act of any of my said trustees herein named, then and in such case, the two surviving or remaining trustees shall nominate a successor for such deceased or incapacitated trustee or such as may refuse to act, and such successor so nominated by the surviving or remaining trustees shall be appointed as a trustee by the Court having jurisdiction of my estate, which said Court may require from such trustee so appointed, such bond as it may deem necessary to insure the faithful performance of this trust.

In the event of the failure of said remaining or surviving trustees to nominate a successor to such deceased or incapacitated trustee or such as refuse to act for the period of fifteen days after such vacancy shall occur, the Court having jurisdiction of my estate shall have authority to select, nominate and appoint a successor to fill such vacancy. Trustees herein named, shall be required to give only such bond as may comply with the law. Whenever bonds are given by my said trustees or their successors, the expense thereof shall be paid for out of my estate, and I direct that any bonds given by my said trustees shall be corporate surety bonds, approved by the Court having jurisdiction of my estate.

Twelfth. I hereby authorize and empower my said trustees herein named and their successors in said trusts at any time when in the judgment of any two of them, it will be for the best interest of my estate, and the beneficiaries hereunder to surrender their said several trusts herein created, to do so, and in such case they shall account to, turn over and deliver all of said property belonging to my estate and held in trust by them, to a corporate trust company of high standing and financial resources, and named by my said Trustees or their successors, and approved and appointed by the Court having jurisdiction of my estate; upon having accounted for, turned over and delivered to said trustees so appointed, all property in their possession and for which they may be chargeable under this Will, they and each of them shall be forever discharged from said trusts, and their respective successors in said trusts respectively, shall have all the powers and authority herein given and granted to said respective trustees in said several trusts herein designated.

It is my wish that my said trustees in said respective trusts herein named, and their successors, shall act harmoniously, but I further will and direct that any two of my said trustees shall have full

power and authority to do anything herein provided to be done by said trustees and their successors in said respective trusts.

Thirteenth. I hereby nominate and appoint as Executors of this Will, my wife, Estelle Rust, James G. McPherson and Charles J. Reynick, all of the City of Saginaw, Michigan, and request that they be required to give no greater bond or bonds than may be required by law. In the event of the death, total incapacity to act, or refusal of any of said Executors to act, then the remaining or surviving executors shall nominate a successor to such of them as for any reason above specified do not act, which said nominee shall be appointed by the Court having jurisdiction of my estate, as the successor to such incapacitated or deceased executor or person refusing to act, which said executor so appointed, shall give such bond as the Court having jurisdiction of my estate may require; the cost of all bonds given by my said executors, or their successors, shall be paid by my estate.
[fol. 37] In the event of the failure of said remaining, or surviving executors to nominate a successor to such deceased, declining or incapacitated executor for the period of fifteen days after such vacancy shall occur, the Court having jurisdiction of my estate shall have authority to select, nominate and appoint a successor to fill such vacancy.

Fourteenth. I hereby give and grant to the executors of this Will herein named, and their successors, full power and authority to sell all lands, timber and property, both real, personal and mixed, of every name, nature and description, wherever the same may be situated, belonging to my estate, excepting said Ezra Rust Mining Property, on such terms as to all cash, part cash or all credit, as to them may seem best, without the intervention of any court.

I hereby authorize my said executors to invest and re-invest all money, rents, royalties and income from mining leases, mining contracts and mining interests, and from all other sources coming to their possession during their administration of my estate, as such executors, and hereby authorize my said Executors and their successors to sell and exchange any or all stocks, bonds and other securities at any time that may belong to my estate during their administration of my estate, when in their judgment it is for the best interest of my estate so to do.

It is my wish that my executors herein named, and their successors, shall act harmoniously, but I further will and direct that any two of my said executors shall have full power and authority to do anything herein provided to be done by said executors or their successors.

Fifteenth. I hereby further will and direct that as nearly as practicable, my said executors shall close up my estate one year from the date of my death.

Sixteenth. I hereby nominate and appoint as guardian of the person of my said adopted daughter, Maxine Rust, during her minority, my said wife, Estelle Rust, and in the event of the death

of said Estelle Rust during the minority of said Maxine Rust, then I hereby appoint Mrs. Rhea E. Peirsol of Ann Arbor, Michigan, as guardian of the person of said Maxine Rust during her said minority.

In Witness Whereof, I have hereunto set my hand and seal this third day of October, A. D. 1917.

Ezra Rust. [L. S.]

The above instrument, consisting of twelve sheets, was at the date hereof, signed, sealed, published and declared by the said testator as and for his last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses.

Geo. L. Burrows, Jr., Residing at Saginaw, Mich. Charles A. Khuen, Residing at Saginaw, Mich.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed April 5, 1924

The above named defendants for their joint and several answers to the bill of complaint of the plaintiffs in the above entitled cause respectfully represent and state to the court as follows:

[fol. 39]

I

Defendants state that they have no knowledge as to the allegations of paragraph 2 of the bill of complaint, but believe the allegations to be true.

II

Defendants admit the allegations of paragraph 2 of the bill of complaint.

III

Defendants state that they have no knowledge as to the allegations of paragraph 3 of the bill of complaint, but believe the allegations to be true.

IV

Defendants state that they have no knowledge as to the allegations of paragraph 4 of the bill of complaint, but believe the allegations to be true.

V

Defendants admit the allegations of paragraph 5 of the bill of complaint.

VI

Defendants admit the allegations of paragraph 6 of the bill of complaint, except in so far as in said paragraph it is alleged that

the defendants are about to institute vexatious suits and thereby interfere illegally with the property rights and privileges of the plaintiffs, which the defendants deny.

VII

Defendants admit the allegations of paragraph 7 of the bill of complaint.

VIII

Defendants admit the allegations of paragraph 8 of the bill of complaint.

[fol. 40]

IX

Defendants deny the allegations of paragraph 9 of the bill of complaint.

X

Defendants admit that if the plaintiffs should pay said tax they could not maintain a suit in either the federal or the state courts to recover it.

XI

Defendants state that they have no knowledge or belief as to whether this suit and the application for restraining order an injunction herein are in good faith, and deny that the same are based upon proper and reasonable grounds of contest as to the constitutionality and the validity of the statute, and deny that the plaintiffs are entitled to the protection of this court as against the imposition of the tax penalties, interest and liens imposed thereby and the institution of actions provided for therein, and deny that the imposition of the same is inequitable and unjust.

Having thus made full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

Dated March 31, 1924.

Clifford L. Hilton, Attorney General; G. A. Youngquist, Assistant Attorney General; Patrick J. Ryan, Solicitors for Defendants, 102 State Capitol, St. Paul, Minnesota.

[fol. 41] Sworn to by Samuel Lord. Jurat omitted in printing.

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed April 16, 1924

Now come the plaintiffs above named and move the Court for an order enjoining, restraining and prohibiting the defendants, until

the hearing and determination of the plaintiffs' motion for interlocutory injunction and until the further order of the Court herein, from acting under or in pursuance of, or from in any way carrying [fol. 43] out or enforcing the provisions of the act of the Legislature of the State of Minnesota, being Chapter 226 of the Laws of 1923, entitled "An act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explore, mine, take out and remove ore from the same," so far as the plaintiffs herein are concerned.

Mitchell, Doherty, Rumble, Bunn & Butler, Attorneys for Plaintiffs, 1005 Merchants Natl. Bank Bldg., Saint Paul, Minnesota.

Stipulation

It is stipulated, that the foregoing motion may be brought on for hearing before the Court without further notice and submitted without argument.

Mitchell, Doherty, Rumble, Bunn & Butler, Attorneys for Plaintiffs. Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Attorneys for Defendants.

[fol. 44] In United States District Court

[Title omitted]

Temporary Restraining Order

This matter having come on before the undersigned, Judge of said Court, on the 16th day of April, 1924, at the court rooms in the City of Minneapolis, Minnesota, pursuant to motion of the plaintiffs for a temporary restraining order, and the parties having stipulated [fol. 45] that said motion may be submitted without further notice and without argument, and the Court being fully advised in the premises, and it being made to appear by the averments of the bill of complaint herein that irreparable loss or damage will result to the plaintiffs before the hearing of the plaintiffs' application for an interlocutory injunction can be had unless the defendants herein are, pending the said hearing, enjoined and restrained as prayed for in said bill of complaint;

It is ordered that the defendants and each of them be and are hereby enjoined, restrained and prohibited, either as individuals or as representatives of the State of Minnesota, until the hearing and determination of the plaintiffs' motion for an interlocutory injunction and until the further order of the Court herein, from acting under or in pursuance of, or from in any way carrying out or enforcing the provisions of the act of the Legislature of the State of Minnesota, being Chapter 226 of the Laws of 1923, entitled "An

act providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explore, mine, take out and remove ore from the same", so far as the plaintiffs herein are concerned, except that the defendants shall not be enjoined or prohibited from receiving and filing any reports which the plaintiffs may make pursuant to said statute.

Dated at Minneapolis, Minnesota, this 16th day of April, 1924.

Wm. A. Cant, Judge.

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AND AGREED STATEMENT OF FACTS—Filed April 9, 1924

For the purposes of the trial of the above entitled suit, it is hereby stipulated and agreed by and between the respective parties, as follows:

[fol. 47]

I

That the matters alleged in paragraphs 1, 3 and 4 of the complaint are true and may be taken as proven.

II

That the lessors named in the lease described in the bill of complaint herein and their successors have never designated any other place than Saginaw, Michigan, as the place for payment of royalties, and all royalties under said lease have been transmitted by the lessee from Minnesota and received by the plaintiffs at Saginaw, Michigan, as provided in said lease, including those for the year 1923.

III

All the testimony and evidence received in the case of Royal Mineral Association, et al. vs. Samuel Lord, et al., pending in this court and tried together with this case, and all facts stipulated orally in court in the said Royal Mineral Association case and entered in the transcript of the evidence, shall be considered as having been introduced, received and stipulated in this case, subject to the same objections and conditions as were made in the case of Royal Mineral Association.

IV

It is further agreed that the following facts may stand as admitted, subject to objections as to relevancy and materiality and without the introduction of other evidence, to-wit: All the facts stated and set

forth in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, and 22, of that certain written stipulation or agreed statement of facts made and filed in the case of Royal Mineral Association, et al. vs. Samuel Lord, et al., pending in this court and tried at the same time with this case, and [fol. 47½] for the purposes of this agreement the said stipulation in the Royal Mineral Association case may be referred to and those parts of it made material under this stipulation shall be considered as part of the record in this case, with the same force and effect as if the said stipulation in the Royal Mineral Association case were filed in this cause.

V

All admissions of fact under this stipulation are made without admitting the relevancy or materiality of any such facts and subject to any and all objections which may be offered on those grounds.

Dated April 8, 1924.

Mitchell, Doherty, Rumble, Bunn & Butler, Attorneys for Plaintiffs. Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Attorneys for Defendant.

[fol. 48] The following are the paragraphs referred to in paragraph IV of the foregoing, from the stipulation in the case of Royal Mineral Association et al. vs. Samuel Lord et al.:

14. That in 1923 there were in Minnesota one hundred twenty-four (124) mines in operation (including State owned mines), producing 45,300,000 tons of ore. There were, during the year 1923 in Minnesota four instances in which fee owners, other than these plaintiffs, operated their own properties and sold the ore produced, without receiving or paying royalties thereon; that in two of those instances the operation was largely a cleaning-up process, the mines being near exhaustion, the ore produced from these two properties amounting to approximately 92,000 tons; and in the third instance the operator mined his fee-owned property in connection with adjoining leased property, producing from the former 91,000 tons of ore and from the latter 111,000 tons of ore; and in the fourth instance there remained about 250,000 tons of open pit ore, of which 128,000 tons were removed in 1923 and the remainder of which the owner intends to remove forthwith, and that there remains 3,200,000 tons of underground ore which the owner does not intend to mine for several years to come but does intend to mine later.

15. In very many instances, in fact in the majority of cases where mines are operated, they are operated by lessees who derive the consideration or returns for the ore produced through mining and selling it, and do not receive any returns through royalties paid to them, and this was true in 1923.

16. That the iron ore in the lands of the plaintiffs constitutes the chief value thereof, and that in the case of iron ore deposits as a general rule the entire substantial value thereof consists in such iron ore.

17. That for the year 1923 the total amount of royalties on iron ore reported to the Minnesota Tax Commission was $16,347,004.22, [fol. 49] of which amount approximately $9,538,151.87 was reported as being received by resident owners, excluding from such resident owners foreign corporations, and approximately $1,474,150.58 was reported as being received by corporations foreign to the State of Minnesota, the remaining approximately $5,334,701.77 being reported as received by non-residents of the State.

18. All the known iron mines in the State of Minnesota lie in the northern or northeastern part of the State.

19. That approximately one-half of the mines operated in Minnesota in 1923 were open pit mines and approximately three-fourths of the ore mined in 1923 was taken from open pit mines. In the usual course of mining from open pit mines, the surface is removed and the iron ore mined by the use of steam shovels.

20. At various times two hundred forty-three (243) iron mines, underground and open pit, have been in operation, of which forty-five (45) have been exhausted.

21. That the total tonnage of merchantable ore in Minnesota, according to the figures of the Minnesota Tax Commission in 1923, was approximately 1,300,000,000 tons. That during the year 1923 approximately forty (40) mines owned by subsidiary corporations of a certain corporation in fee were held by those corporations free from lease and were not operated, which mines, according to said figures, contained 344,000,000 tons of such ore. Seven (7) such mines were so held by one of such subsidiaries, which is an operating company, which was during said year engaged in mining, and that the present intention of said operating company is to mine said properties and not to lease them. The remaining mines above referred to were in 1923, and previously, owned in fee by said subsidiary corporations of the parent corporation, and prior to 1923 many of the mines were operated by said operating company under arrangements between said operating company and said other subsidiary corporations, which arrangements did not in any instance involve the payment of any royalty by said operating company to any such owning subsidiary [fol. 50] corporation. During 1923 one mine was operated under such arrangement, and it is the present intention of said corporations to continue the said practice of operating their said mines under the aforesaid arrangements, not involving the payment of royalties.

22. During the last few years preceding 1923 there have been a number of instances in which iron ore properties not subject to lease have been sold outright and the fee transferred for a cash consideration, and a number of instances in which the fee of iron ore properties has been purchased by the lessee and the lease thereon cancelled. In 1923 there were at last two, and possibly more, instances in which fee owners of iron ore land which was not subject to lease sold the same for a cash consideration, or its equivalent, one of which consisted in the purchase of an undivided one-sixteenth in-

terest in fee by a company which already held a lease on the remaining fifteen-sixteenths interest. There was one instance in 1923 where an undivided eleven-thirty-seconds of the interest in fee was sold subject to an existing lease, the purchaser of said undivided fee interest and the lessee under said subsisting lease being companies having the same stockholders. There was another instance in 1923 of the sale of the fee interest, which is described in the agreed statement of facts in Bardwell, et al., v. Sargent Land Company, et al., tried herewith.

[fol. 51] UNITED STATES DISTRICT COURT

[Title omitted]

Agreed Transcript of Evidence—Filed March 28, 1925

CAPTION

The above entitled cause came on for trial and determination on the merits before the Honorable William A. Gant, Judge of said Court, at Saint Paul, Minnesota, on April 7, 1924. Messrs. Beaumont, Smith & Harris; Weadock & Weadock; and Mitchell, Doherty, [fol. 52] Rumble, Bunn & Bulter appeared for the plaintiffs, and Messrs. Clifford L. Hilton, Attorney General, G. A. Youngquist, Assistant Attorney General, and Patrick J. Ryan appeared for the defendants.

The following is a summary statement of the evidence offered and other proceedings had upon the trial, all of the witnesses named being called on behalf of the plaintiffs:

ERNEST S. MCGOWAN, of the Sales Department of The Universal Portland Cement Company, residing in Minneapolis, Minnesota, testified he has been engaged in that business for eighteen years and it is part of his work to keep track of the location of good sand and gravel in connection with the sale of cement. From 750,000 to 1,000,000 yards or tons of gravel are used in the State of Minnesota per year in connection with the making of concrete and the use of cement, and upwards of 4,000,000 yards or tons for all purposes, including road work. Deposits of gravel are found in about one-half of the various localities in the state. A greater part of them are leased on a royalty basis. It is the exception rather than the rule that any other method is used. The royalty rate is usually about ten cents per yard, but in some cases it is fifteen cents and occasionally as high as twenty-five cents. It is common, as to comparatively large gravel pits, that a minimum payment per year, whether gravel is taken or not, is provided in the lease. The method of mining gravel is similar to the method of mining iron ore by open pit operations. The gravel requires a washing operation to remove soil, clay, etc., and hence is very similar to the open pit iron ore operation where

the ore requires beneficiation. Gravel pits vary in depth from a few feet to sixty or seventy feet.

On cross examination witness testified that there are about forty large commercial pits in the state. It was his impression that nearly [fol. 53] all of them are operated under lease. He had not ever personally examined any of those leases.

CHARLES H. YOUNG, Secretary of District #19, National Sand & Gravel Association, testified that he is a resident of St. Paul with an office in Minneapolis, and is president of Robbins, Young & Co., and operator of Landers, Morrison & Christenson Co., both companies being sand and gravel operators, and witness has been in that business for ten years. There are more than forty commercial gravel pits of considerable size in the state. A number of them, three of the largest, are operated on a royalty basis and with the others it is quite general. The royalty usually runs from five cents up. His own companies own their properties. Gravel is found in commercial quantities in about one-half of the various localities in the state. Merchantable gravel should have a depth of from 20 feet up to about 70 feet. The annual production of gravel in the State of Minnesota for all purposes is in excess of 5,000,000 yards per year, of which over one-half is handled on a royalty basis, although he does not think he has personally inspected any of the leases; he is not sure. Where gravel is to be used for ordinary gravel roads it is not washed. When it is to be used for concrete it is washed.

PHIL MCCAULEY, a civil engineer, testified that he has been practicing his profession for fifteen years and has been in the Minnesota Highway Department for three years with title of right of way engineer. A part of witness' duties is the leasing of gravel pits in connection with the construction of trunk highways. The state in the last few years, in connection with the Highway Department, has been using from 500,000 to 1,000,000 tons or yards of gravel per year. The gravel is obtained in four methods: (1) The principal [fol. 54] method is by what is called a patrolman's permit for a small amount of gravel on a royalty basis; (2) where a large quantity is wanted and the state has an exclusive right to it at so much per yard; (3) where a pit is leased for a period of years on a royalty basis; (4) where the pit is bought outright. About seventy-five per cent of the gravel is obtained on a royalty basis under the three methods first mentioned. The state now has about 1,500 to 1,800 gravel leases, including patrolmen's permits, on a royalty basis. The royalty runs from three cents up to thirty-five cents. In extreme cases it has been fifty cents, but that lease has been discontinued. It is generally from five to seven cents a cubic yard. Some of the leases provide for a minimum payment whether gravel is taken in a given time or not.

On cross-examination the witness testified that all of the gravel

beds leased by the state were used for the purpose of furnishing gravel for state highways. Of the gravel pits that he has knowledge of in the state, particularly the larger pits, many are held and owned by railroad companies in connection with their work in keeping up their railroad business. Pits which are operated for the furnishing of gravel for purposes other than state, county or city road work or for railway purposes are comparatively few. At the height of the season there are about 1,000 patrolmen employed on the state highways.

JOSEPH SHIELY, of St. Paul, Minnesota, testified that he is producer of mineral aggregates, sand, gravel and crushed rock, that he is president of J. L. Shiely Company, and is Secretary and Treasurer of National Sand & Gravel Association. The bulk of gravel in the state is handled on a royalty basis. His company last year pro-
[fol. 55[duced 225,000 yards or nearly 300,000 tons, all from pits located within the city limits of St. Paul. They operate on a royalty basis, paying fifteen cents per cubic yard. There are several rock quarries in the State operating on a royalty basis. Witness has had some experience with the method of mining iron ore by the open pit method, having been employed at one time by Butler Brothers when the Cyprus Mines were open at Carson Lake, Minnesota. When iron ore is mined by the open pit method and ore is washed to make it marketable, the process as to machinery and plant equipment is very similar to that used in operating a gravel bed. Gravel bed leases generally provide a minimum royalty payment whether gravel is actually mined or not. There are instances where there are sub-leases of gravel beds, the sub-lease providing for a higher royalty than the underlying lease. The annual production of gravel in Minnesota for commercial purposes, not including gravel used for highway purposes taken from pits used or purchased for that purpose, runs about between 2,000,000 and 3,000,000 tons. Commercial gravel, washed, screened and crushed, is worth $1.25 per ton f. o. b. St. Paul or Minneapolis.

CHARLES HAYDEN, Assistant Right of Way Land and Tax Commissioner of the Great Northern Railway Company, testified that he has held that position with the railway company for more than 20 years and in that connection has had to do with the leasing of gravel pits for the railway company. The railway company has leases of gravel pits made to others on a royalty basis.

D. E. WOODBRIDGE, mining engineer at Duluth, Minnesota, testified that he has recently made an investigation in the state offices and that the State of Minnesota, as lessor, has outstanding at the
[fol. 56] present time eleven leases on gravel beds and has had a total of thirty since 1921. All of the present eleven are on the basis of a royalty of five cents a yard. On those which have terminated

the royalty has run from five cents to twenty-three and a half cents. Five of the eleven leases are to the county commissioners of St. Louis County, two to people in Hibbing, two to people in Chisholm, and two to people in Kinney.

In comparing the operation of iron mines and gravel pits, the first thing in both is exploration for quantity and quality. This is done in both cases either by drilling or test pitting, the properties are then stripped and the ore or the gravel is mined by mechanical process such as steam shovels, drag lines or the like. The general process of washing iron ore is to pass it through screens. The general process of washing gravel is also to pass it through screens. The coarse ore is crushed and the coarse gravel is crushed.

JOHN L. WATSON, Right of Way Commissioner of the Northern Pacific Railway Company, St. Paul, Minnesota, testified that it has been customary for his railroad to make leases on gravel pits on a royalty basis, of which they have three outstanding at the present time. These leases provide for an annual minimum payment whether any gravel is taken or not. The rate varies from five cents to ten cents per yard.

HECTOR MACCRAW, Mineral Clerk of the Minnesota Tax Commission, testified that according to the report of his department the total tonnage of the known merchantable iron ore on state owned land in December, 1922, was approximately 150,000,000 tons, with a total of 84 mining leases outstanding. For ore mined during the year 1923 the state was paid in royalties approximately $1,955,805.40. [fol. 57] Most of the state leases are on a twenty-five cent royalty basis. The royalty paid in 1923 represents a tonnage mined of about 5,000,000 tons during that year. About one-tenth of the known merchantable iron ore in the state belongs to the State of Minnesota.

It was stipulated in the evidence that royalty rates in iron mining leases in the State of Minnesota vary from 12½c. to $1.25.

It was further stipulated that it was understood that the sand and gravel witnesses testified that royalties on sand and gravel leases were actually paid during the year 1923.

It was further stipulated that it has been the practice in Minnesota for many years to lease real estate such as business lots in cities on long time leases for rentals payable from time to time in cash and that this was true during 1923.

It was further stipulated that agricultural lands were, during 1923, and for many years last past had been, often and customarily leased for rentals, cash or otherwise in the State of Minnesota.

It was conceded that Chapter 226, General Laws of Minnesota for the year 1923 was the only statute providing a tax on rentals in the State of Minnesota.

It was also conceded by counsel for the defendants that the court had equity jurisdiction.

It is further stipulated and agreed that the foregoing transcript of evidence and proceedings had in the above entitled cause is a full, complete and correct statement thereof.

[fol. 58] Dated this 21st day of March, 1925.

Beaumont, Smith & Harris, Weadock & Weadock, Mitchell, Doherty, Rumble, Bunn & Butler, Solicitors for Plaintiff.
Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants.

JUDGE'S CERTIFICATE TO STATEMENT OF EVIDENCE

The foregoing transcript of evidence is found to be true, complete and properly prepared, and is hereby approved.

Dated this 28th day of March, 1925.

Wm. A. Cant, Judge of United States District Court.

[fol. 59] UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE RESTRAINING ORDER—Filed May 2, 1924

The oral stipulation heretofore made between the parties hereto that the said cause should be heard and determined on the merits by the Honorable William A. Cant, Judge of said Court, at Saint Paul, Minnesota, on April 7, 1924, at ten o'clock A. M. or as soon [fol. 60] thereafter as counsel could be heard, is hereby ratified and confirmed, the cause having been heard at said date.

It is further stipulated that the restraining order heretofore issued herein shall remain in full force and effect pending said determination of the issues on the merits, in lieu of an interlocutory injunction pursuant to the requirements of the Act of Congress relating thereto, the application therefor, hearing thereon and determination thereof by three judges being hereby expressly waived.

Dated April 23, 1924.

Mitchell, Doherty, Rumble, Bunn & Butler, Attorneys for Plaintiffs. Clifford L. Hilton, Attorney General; G. A. Youngquist, Asst. Attorney General; Patrick J. Ryan, Attorneys for Defendants.

[fol. 61] UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed Jan. 16, 1925

The memorandum filed herewith in the case of Royal Mineral Association, et al. vs. Samuel Lord, et al., is adopted and made a part of this case.

Let decree in the above entitled suit be prepared in accordance herewith, and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixty days after the entry of such decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[fol. 62] Memorandum

During the year 1921, the Legislature of the State of Minnesota, enacted Chapter 223 of the laws of that year. This Act provided for the levy of a tax payable annually and amounting to six per cent of the valuation of all ore mined or produced within the State during the calendar year. Under the Act, such valuation is ascertained by making certain deductions from the value of such ore at the place where the same is brought to the surface of the earth. Among such deductions is: "4. The amount of royalties paid on the ore mined or produced during the year." This is an occupation tax. Oliver Iron Mining Co. vs. Lord et al., 262 U. S. 172. It is collectible by suit against the person from whom the same is due the same as other demands are enforceable.

During the year 1923, the legislature of that State enacted Chapter 226 of the laws of that year. This Act provides that "There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter for permission to explore, mine and take out and remove ore from land in this State, a tax of six (6) per cent." By Section 8 of the Act, this tax is made a specific lien on the interest of the person from whom the tax shall be due, in and to the land on account of which the royalties are paid. Provision is also made for collection of the amount due by suit and by a sale thereunder of the interest in such land held by the person from whom the tax shall be due.

Various persons and corporations who are in receipt of royalty from ore lands in said State urge that the tax imposed under Chapter 226, supra, is in violation of certain provisions of the Constitution of the State of Minnesota, and of certain other provisions of the Constitution of the United States, and they have brought a number of actions, of which this is one, to enjoin the enforcement of the tax.

In a large way, the question is whether the Act runs counter to any of the constitutional provisions which have been invoked.

The important provision of the State constitution which is involved, is that "Taxes shall be uniform upon the same class of subjects." Article 9, Section 1.

The important provisions of the Constitution of the United States which are involved are found in that part of the Fourteenth Amendment, which reads: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Other constitutional provisions have been discussed on the argument and in the briefs. Without overlooking or minimizing the force of any of them, it may be said that they are either involved in a discussion of the specific provisions above set forth, or they yield to the argument which may be made against them. It is urged, for example, that the Act violates that provision of the Constitution of the United States which provides that "No State shall * * * pass any * * * law impairing the obligation of contracts." Article 1, Section 10. Giving the argument in that behalf due weight and consideration, it does not appear that the provision referred to is applicable here. The laws as to taxation [fol. 63] and the amount of the levy in any particular year are subject to constant change. All contracts are made subject to the right and the power of the State to make such modification in the laws with respect to future taxation as may seem necessary. Contracting parties may not in effect agree that the State shall not modify its revenue laws, or shall not either increase or diminish the burden of taxation. If the enactment in question is otherwise valid, it will stand as against this objection.

Speaking generally, unless the Act in question is invalid as against the uniformity clause of the State Constitution, with reference to taxation, above quoted, or as against the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, above quoted, it must stand. These provisions and the discussion thereunder are closely related in a case of this kind. The matter may be reduced to still lower terms. The question is whether this court should hold that the classification, royalties, adopted by the legislature of the State of Minnesota, as a basis of taxation, or for the computation of the tax under Chapter 226, Laws of Minnesota, 1923, is invalid, and that the tax levied pursuant thereto is void.

1. The following rules are specially applicable to the uniformity clause of the State Constitution:

(a) Where that clause is invoked in advance of a decision by the Supreme Court of the State, holding a state law to be in violation thereof, Federal Courts will not so declare, unless such holding shall be imperatively necessary. If there has been no decision by the Supreme Court of the State, the Federal Court will seek to an-

ticipate what the holding of the State Court would be, and will decide accordingly.

Louisville & Nashville R. R. Co. vs. Garrett et al., 231 U. S. 298, 305;
Pelton vs. National Bank, 101 U. S. 143, 144;
Pullman vs. Knott, 235 U. S. 23, 27;
Michigan Central R. R. Co. vs. Powers, 201 U. S. 245, 291;
Coulter vs. Louisville & Nashville R. R. Co., 196 U. S. 599, 609.

(b) The two cases last above referred to clearly indicate that the Federal Courts are especially loth to interfere where the Act in question involves the revenues of the State.

(c) The Supreme Court of the State of Minnesota has not passed upon the validity of the Act in question.

(d) The holdings of the Supreme Court of the State of Minnesota, as respects classification for the purpose of taxation, are that the legislature has a very wide range of discretionary power. Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 181. State vs. Royal Mineral Ass'n., 132 Minn. 232, 235. There are well recognized limitations to this power which serve as guides in the exercise thereof. "The classification must be reasonable, and such as is suggested by essential differences of nature, situation, or circumstances, or by characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto [fol. 64] the ordinary methods of taxation."

Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 181, 182;
State ex rel. St. Paul City Ry. Co. vs. Minnesota Tax Commission, 128 Minn. 384.

2. The following rules are applicable to cases where the due process clause or the equal protection clause of the Fourteenth Amendment is invoked, or where one or both of those clauses and the uniformity clause of the State Constitution are involved.

(a) Under all the authorities the classification must be a reasonable one and such as essential differences suggest.

State ex rel vs. Minnesota Tax Commission, 128 Minn. 384;
Gulf Colorado & S. F. Ry. Co. vs. Ellis, 165 U. S. 150, 155;
Southern Ry. Co. vs. Greene, 216 U. S. 400, 417.

(b) The decided policy of the Supreme Court of the United States when the foregoing clauses are invoked, is to announce and enforce the rule allowing State legislatures a wide discretionary power with respect to classification for purposes of taxation. Bell's Gap Ry. R. Co. vs. Penn, 134 U. S. 232.

"Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. Keeney as Admr. vs. Comptroller, etc, 222 U. S. 525, 536. The State is not

bound by any rigid equality." Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331."

"Any classification is permissible which has a reasonable relation to some permitted end of Governmental action. It is not necessary * * * that the basis of the classification must be deducible from the nature of the things classified * * *. It is enough, for instance, if the classification is reasonably founded in 'the purpose and policy of taxation."

Watson vs. State Comptroller, 254 U. S. 122, 124, 125;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255.

"Passing on that amendment (the 14th) we have repeatedly decided * * * that it does not take from the States the power of classification, and also that such classification need not be either logically appropriate or scientifically accurate. * * * A wide range of discretion, therefore, is necessary in legislation to make it practical." District of Columbia vs. Brooke, 214 U. S. 138, 150."

"There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment. Middleton vs. Texas Power & Light Co. 249 U. S. 152, 157."

[fol. 65] Without extended discussion, the same view is taken in National Paper & Type Co. vs. Frank K. Bowers, Collector, U. S. Supreme Court, Dec. 15, 1924.

The equal protection clause of the Fourteenth Amendment does not prohibit double taxation by the States.

Shaffer vs. Carter, 252 U. S. 37, 58;
Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325, 330.

(c) The limitation upon this power of classification is that "It must not be exercised in clear and hostile discrimination between particular persons and classes."

Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255;
Bell's Gap. R. R. Co. vs. Penn. 134 U. S. 232, 237."

(d) In Dawson vs. Kentucky Distilleries Co. 255 U. S. 288:

(1) The Court was dealing with a nondescript imposition from the beginning.

(2) The basis of the alleged classification and tax was elusive, shifty and unsatisfactory. It was not uniform on property of essentially the same class.

(3) The Act "Imposed upon every person engaged in the business of manufacturing whisk-y, or in the business of owning and storing the same in bonded warehouses within the State, what was called an 'annual license tax' of fifty cents a gallon upon all whisk-y either withdrawal from bond or transferred in bond from Kentucky to a point outside the state."

(4) Though called an annual license tax in the Act, the imposition was held to be a tax on the property.

(5) On the argument it was conceded by the authorities seeking to uphold the tax, that if it was a tax on property, the same was void.

(6) In view of the concession so made, the question of classification was not given extended discussion by the Court.

3. Various facts bearing upon the propriety and justice of the classification here involved must be considered.

The iron deposits constitute a very substantial part of the easily available great natural wealth of the State of Minnesota. Development and operation of iron mines, a highly necessary and important industry, means at the same time the exhaustion of that wealth. Such exhaustion attends also the removal of the products of stone quarries and of gravel beds and the cutting and removal of certain kinds of timber. Generally, the development and successful prosecution of any enterprise increases the taxable wealth of the State. In large part, the products of quarries, gravel beds and forests remain within the State and in some form serve as the basis of taxation therein. With respect to iron ore, however, practically all that is mined is being transported beyond the limits of the State. Great [fol. 66] natural wealth which serves as the basis of taxation is annually being withdrawn therefrom. Of necessity the revenues of the State will be substantially affected thereby.

4. Without doubt, when the Legislature of 1923, met and considered problems of taxation, it knew of Chapter 223, Laws of 1921, State vs. Klasen, 123 Minn. 382. That Act was presumably valid. On its face, it pointed to the fact that one of the interests concerned in the mining industry was thereby subjected to a tax of six per cent. It also disclosed the fact that in cases where the mine was leased, the other interest, that represented by the person who received royalties, was not subjected to any such burden. The legislature found this latter class already carved out by the earlier Act. In 1923, the general purpose apparently was to assure the State a return of a full six per cent less certain minor deductions, on the value of all ore mined and brought to the surface of the earth. And the further general purpose apparently was to adjust this burden equitably as between the two classes of interests concerned in the operation where the mine was being operated by a lessee. One of these classes, represented by the operator, was specified in Chapter 223, supra, and the tax burden by that Act was imposed thereon. The other interest, represented by those receiving royalties was specified in Chapter 226, Laws of 1923, and a tax in a different form was imposed on that class. The latter Act was designed to complement the former, which related to the same general subject matter. In the consideration of this case, it is neither possible, nor proper to divorce entirely the two acts which have been referred to. Either separately, or together, they indicate the policy of the State with reference to the taxation of the interests therein specified.

5. The Federal Constitution does not require that the two classes above referred to should have been covered by the same enactment, or that the two together should have exhausted the subject and covered the entire field. "The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment." Supra.

6. The basis of classification which may be invoked in support of Chapter 226, is the circumstance or condition that, of necessity, the lands to which the Act applies, in the course of their development, as operating mines, are being and will be depleted in value and ultimately will be lost to the State as a source of substantial revenue. This is the underlying consideration. The desire of the legislature was to reach the interests involved in property of that class and apply thereto a special tax. If such lands may properly be placed in a class by themselves, the rest is a matter of identifying the interests therein for the purpose of taxation. This latter may be called classification of such interests, but it is little more than identification thereof—a pointing out and specifying of the particular interests sought to be taxed.

7. We are concerned to learn whether there are reasonable grounds for this classification, and whether under the provisions of the Act, all within the class involved in Chapter 226, may be treated alike. [fol. 67] The burden on the plaintiff to answer one or both of these questions clearly in the negative. If there has been no "clear and hostile discrimination between particular persons and classes," the law should stand.

Having in mind the real basis for the classification adopted, the fact that other mining properties, not in process of being wasted or depleted, are not included under the provisions of the Act, is not important. This is true whether they are being sold and transferred from time to time, like other property, or are not. With the lapse of time, as such properties come within the class contemplated, the Act will apply. In time, presumably, all ore-bearing properties of substantial value in the State will become subject to the provisions of the law in question.

Chapter 226 is not invalid, because it may be subject to technical criticism, or will not work with perfect nicety of detail, or because conditions may be thought of which would seem to involve differences and inequalities.

"The difference, however, is one such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases and cannot be regarded as an unfriendly or unreasonable discrimination."

Shaffer vs. Carter, 252 U. S. 37, 57.

In Oliver Iron Mining Co. vs. Lord, et al. 262 U. S. 172, 181, the Court says: "It is also said that the royalty provision and others respecting taxes will work a discrimination as between lessees in that some will be subjected to a higher tax than others. No doubt, there will be differences in the amount, but they will result from differ-

ences in situation and not from differences in treatment. Some lessees pay higher royalties than others and will secure a higher deduction on that score. * * * In short, the tax is to be adjusted to the value of the output, less the major expenses of the business, and this according to uniform rules. We, therefore, cannot say that it is intended to, or will work any arbitrary or unreasonable discrimination as between different lessees."

The circumstance that during the year 1923, plaintiff may have been assessed under the head of "Money and credits," on account of funds then on hand and received as royalties during that year, falls within the foregoing observations and authorities.

The fact that other wasting properties, such as stone quarries, or gravel beds, or certain timber areas are not included in the Act here under consideration, does not invalidate the classification. They might have been included, but the differences and distinctions between them and that which was included, justifies their omission. The differences upon which to base a classification "Need not be great or conspicuous." Supa. Anthracite coal may be classified separately from bituminous coal. Meat packing may be classified separately from the packing of other food products. A special tax may be imposed on dealers in certain specified articles, while dealers in other articles go free.

Heisler vs. Thomas Colliery Co. 260 U. S. 245;
Armour Packing Co. vs. Lacy, 200 U. S. 226;
Southwestern oil Co. vs. Texas, 217 U. S. 114, 121.

[fol. 68] 8. The legislature has made the classification, First, in a class by themselves, are the ore lands which are in process of being mined, and, therefore, depleted, and which within a comparatively brief time will be lost to the State as a source of revenue. This clearly distinguishes these lands from other lands in general and from other ore lands in particular. The distinction is based on grounds which have a legitimate relation to the question of taxation. Facing the depletion of certain lands and the loss of their value, the State might be justified in imposing a heavier tax thereon during the intervening time, knowing that when that time should elapse there could be no further substantial tax at all. There is no apparent difficulty in making the classification or in according uniformity of treatment in connection therewith.

9. Next is the identification of the separate interests here involved for purposes of taxation, or the classification thereof. As already indicated, as the mining operation and the depletion of the property are usually carried on, there are two classes of persons, or two sets of interests, and no more, concerned therein. They are the operator who does the mining, and the owner whose ore is being mined, and the respective interest of each. The interests of an intervening lessee are identified with those of the owner for the purposes here in mind. Although together, the owner and the operator are possessed of the entire interest in the property, their relations thereto are markedly different. So great is that difference that one class, or set of interests

may be taxed without the other, as was done by the Act of 1921, and doubtless, different rates of taxation may be imposed, and, as will be seen, different forms of tax may be levied thereon. There is no practical difficulty in recognizing these two classes as separate and distinct for purposes of taxation, and in according uniformity of treatment to all within each class. It is a matter largely of specifying interests, very different in character, which it is sought to reach for purposes of taxation. One is dealt with in the Act of 1921. The right to select that interest as the basis for the imposition of a separate tax is recognized in Oliver Iron Mining Co. vs. Lord et al., supra. Although the tax under the Act of 1921, is an occupation tax, the same is levied because of the operator's relation to the land, and in the last analysis, because of his interest therein. By the Act of 1923, the entire remaining interest is made the basis for the tax there imposed. In cases where there is but one ownership, the tax is imposed under the Act of 1921.

10. In a case where it is clearly made out that a law is unconstitutional, the Court should not hesitate to so declare. If such proof shall not be made, or if the matter is left in doubt, the law should stand. Invoking now and applying some of the basic rules hereinbefore set forth—this Court must be slow to hold a State law invalid; under the evidence here, such a holding is not "imperatively necessary;" in enacting the particular law here involved, the State legislature had "a very wide range of discretionary power;" the classification adopted by the legislature "is a reasonable one and such as essential differences suggest;" such classification does not indicate any "clear and hostile discrimination between particular persons and [fol. 69] classes;" it cannot be said that the classification adopted was not "suggested by * * * characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto the ordinary methods of taxation." It is not clearly shown that Chapter 226, supra, is in violation of either the State or the Federal constitution. The Act, therefore, should be held valid. The justice or injustice of the tax, and the question of where it should ultimately fall, and by whom ultimately it should be paid, are not for determination here and no comment is made thereon.

11. In a sense it may be said that the two taxes herein referred to are together imposed upon the mining operation as a whole, as the same affects any particular description of land. Undoubtedly, the Legislature of 1923, had something like this in mind. This would not require that the two taxes should be of the same kind. The character of the tax depends upon the legislative intent as expressed in the law. Under either Act, the tax might have been laid as an occupation tax, or as an income tax, or as a tax on the land, as might at the same time be applicable and valid and best give effect to the legislative will. Under the Act of 1921, the convenient and practicable form to employ was that of an occupation tax. Taken literally, the Act of 1923, provides for a tax on royalties. Certain non-

residents of the State of Minnesota, urge that as to them, the situs of the royalty is never within the jurisdiction of that State, and, therefore, that the royalty cannot be taxed therein. Shaffer vs. Carter, 252 U. S. 37, 55, is opposed to this view and as against the objection referred to, if the Act were construed as providing for a direct tax on royalties, it would stand. Looking through the Act, however, to the real substance thereof, it is essentially a tax upon the interest in the land owned by the person by whom the tax should be paid and it is so considered in the determination of this case. The amount of the royalty is the basis to be used in the computation of the tax.

Pollock vs. Farmers' Loan & Trust Co. 157 U. S. 429, 581.

12. The question of what royalty receipts shall be included in the computation of the tax for the year 1923, is not decided. It is assumed that in the administration of the law, the Act in question will be so construed as not to offend against any constitutional provision.

From the foregoing, if correct, it follows that the relief prayed for should be denied.

Let decree in the above entitled suit be prepared in accordance herewith, and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixty days after the entry of such decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE

This cause came duly on to be heard, and was argued by counsel, and, upon consideration thereof, it is ordered, adjudged and decreed that the bill of complaint herein be and the same hereby is dismissed, with costs to the defendants to be taxed.

It is further ordered that the temporary restraining order heretofore issued in this suit be and remain in full force and effect for the period of sixty days after the entry of this decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed March 9, 1925

[fol. 72] The above named plaintiffs, conceiving themselves aggrieved by the decree made and entered on the 16th day of January, 1925, in the above entitled cause, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that the temporary restraining order heretofore issued in this cause be and remain in full force and effect pending the appeal herein and until the final determination of this cause.

Mitchell, Dohert, Rumble, Bunn & Butler, 1006 Merchants National Bank Bldg., Saint Paul, Minnesota; Beaumont, Smith & Harris, 1122 Ford Building, Detroit, Michigan; Weadock & Weadock, 301 Bearinger Building, Saginaw, Michigan, Solicitors for Plaintiffs and Appellants.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

The foregoing petition is granted and plaintiffs' appeal allowed, and the plaintiffs having given the undertaking as required by law and approved by this Court.

It is ordered, that the temporary restraining order heretofore issued in this suit be and remain in full force and effect pending said appeal and until the final determination of this cause.

Dated March 9, 1925.

Wm. A. Cant, Judge of U. S. District Court.

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 9, 1925

Plaintiffs, in connection with their petition for appeal in the above entitled cause, present the following assignments of error upon which they will rely in said appeal.

The Court erred:

1. In dismissing plaintiffs' bill of complaint and entering a decree for the defendants.

2. In holding that Chapter 226 of the Laws of Minnesota, 1923, does not violate Section 1 of Article 9 of the Constitution of the [fol. 74] State of Minnesota, which required that taxes shall be uniform upon the same class of subjects.

3. In holding that the tax imposed by said act is not obnoxious to the Fourteenth Amendment to the Constitution of the United States, securing to all persons within the State the equal protection of the laws.

4. In holding that such tax is not in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law.

5. In holding that the tax so imposed does not violate Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts.

6. In holding that iron lands under lease may properly be segregated in a special class and a special and additional tax levied thereon, or on the income or receipts therefrom.

7. In holding that the fact that iron lands are being depleted of their natural wealth furnished any proper basis for classification, under which they may be subjected to special and double taxation.

8. In holding that, for the purpose of special taxation, it is proper to classify lands according to the form of contract by which they are disposed of or enjoyed.

9. In failing to hold that the tax so imposed, if a tax upon royalty as such, distinct and separate from the land, is void, because it attempts to tax property beyond the jurisdiction of the state.

[fol. 75] 10. In failing to hold that plaintiffs were entitled to the relief prayed for in their bill of complaint, and to enter a decree permanently enjoining the defendants from enforcing the provisions of the said act.

11. In holding that unless the act in question is invalid as against the uniformity clause of the state constitution with reference to taxation or as against the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, it must stand.

12. In holding in effect that a classification is valid if based on the incidents of the ownership of the property taxed rather than on its characteristics.

13. In holding in effect that an otherwise invalid and unconstitutional act can be held to be valid because of the existence of a prior act (Chapter 223 of Laws of 1921).

14. In holding that the fact that other mining properties not in process of being mined or depleted are not taxed under the act, is not important.

15. In holding that the fact that other wasting properties such as stone quarries and gravel pits, or certain lumber areas, are not included in the act does not invalidate the classification.

16. In holding that a heavier tax may be levied on ore lands which are being depleted (or on the income or receipts therefrom) than on other ore lands (or on the income or receipts therefrom), or than on other non-ore lands that are being depleted.

17. In holding that under either the 1921 or the 1923 Acts the tax might have been levied as an occupation tax or income tax, or a tax on the land, as might best give effect to the legislative will.

[fol. 76] 18. In failing to hold that if it is a tax against the person, or an excise or privilege tax, or a tax on income or gross receipts, it is void as to non-residents.

Mitchell, Doherty, Rumble, Bunn & Butler, Solicitors for Plaintiffs. Business Address: Merchants National Bank Bldg., Saint Paul, Minnesota. Beaumont, Smith & Harris, Weadock & Weadock, M. J. Cavanaugh, of Counsel for Plaintiffs.

[fols. 77-79] CITATION—In usual form, showing service on Clifford L. Hilton; filed March 28, 1925; omitted in printing

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the Clerk of this Court shall incorporate in the transcript of the record on the appeal in the above [fol. 81] entitled cause to the Supreme Court of the United States the following:

1. Bill of complaint.
2. The answer.
3. The motion for restraining order, stipulation for hearing thereon, and the restraining order.
4. Agreed statement of facts, and paragraphs numbered 14 to 22, inclusive, of the agreed statement of facts in the case of Royal Mineral Association, a corporation, plaintiff, v. Samuel Lord et al., defendants, Equity case No. 99, now also on appeal to the Supreme Court of the United States, which case for convenience was heard at

the same time and with the above entitled cause, and which paragraphs were incorporated by reference in the agreed statement of facts in this cause.

5. Agreed transcript of evidence.
6. Stipulation for hearing and continuing restraining order.
7. Opinion of court and order for decree.
8. Decree.
9. Petition for appeal and order allowing same and continuing restraining order.
10. Assignments of error.
11. Citation.
12. Stipulation for transcript of record.

Dated this 21st day of March, 1925.

Beaumont, Smith & Harris, Weadock & Weadock, Mitchell, Doherty, Rumble, Bunn & Butler, Solicitors for Plaintiffs.
Clifford L. Hilton, G. A. Youngquist, Patrick J. Ryan, Solicitors for Defendants.

[fol. 82] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Joel M. Dickey, Clerk of the above named Court, do hereby certify and return to the Honorable, the United States Supreme Court, that the foregoing, consisting of 82 pages, numbered consecutively from 1 to 82 inclusive, is a true and complete transcript of all the records, process, pleadings, orders and final decree and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said Court and in accordance with a præcipe for such transcript, a copy of which in included within said paging; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with admission of service thereof.

In witness whereof, I have hereunto set my hand as the Clerk aforesaid and affixed the seal of said Court at Duluth in the District of Minnesota, this 2nd day of April A. D. 1925.

Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy. (Seal U. S. Dist. Court, Dist. of Minnesota, Fifth Division.)

Endorsed on cover: File No. 31,025. Minnesota D. C. U. S. Term No. 355. George L. Burrows, Jr., Alice B. Beaumont, Elizabeth B. Huntington, et al., etc., et al., appellants, vs. Samuel Lord, James G. Armson, Odin Halden, etc., et al. Filed April 13th, 1925. File No. 31,025.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 471

HELEN P. BARDWELL, HARRIOT P. AYER, AND ALICE P. FORSMAN, APPELLANTS,

vs.

SARGENT LAND COMPANY, SAMUEL LORD, JAMES G. ARMSON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

FILED MAY 14, 1926

(31,185)

(31,185)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 471

HELEN P. BARDWELL, HARRIOT P. AYER, AND ALICE P. FORSMAN, APPELLANTS,

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION**

In Equity

HELEN P. BARDWELL, HARRIOT P. AYER, and ALICE P. FORSMAN, Plaintiffs,

vs.

SARGENT LAND COMPANY, a Corporation; SAMUEL LORD, JAMES G. Armson, and Odin Halden, as Constituting the Minnesota Tax Commission; Clifford L. Hilton, as Attorney General of Minnesota; Raymond P. Chase, as State Auditor of Minnesota, and Henry Rines, as State Treasurer of Minnesota, Defendants

BILL OF COMPLAINT

Helen P. Bardwell, Harriot P. Ayer and Alice P. Forsman bring this, their Bill of Complaint, against Sargent Land Company, a corporation; and allege:

(1) That plaintiff, Helen P. Bardwell, is and for many years last past has been a resident and citizen of the State of Massachusetts and that each of the plaintiffs, Harriot P. Ayer and Alice P. Forsman, for many years last past has been and now is a resident and citizen of the State of California.

(2) That said defendant, Sargent Land Company, has been for many years last past and now is a corporation duly organized and existing under the laws of the State of Minnesota, having its principal office and place of business in the City of Minneapolis, Hennepin County, Minnesota, in the Fourth District of said State; that said defendant has a capital stock of 2,160 shares of the par value of Fifty Dollars each and that each of the plaintiffs now is and for a long time last past has been the owner and holder of a large number of said shares.

(3) That defendants, Samuel Lord, James G. Armson and Odin Halden are the duly appointed, qualified and acting members of, and [fol. 3] constitute, the Minnesota Tax Commission of said State, a department of the State government thereof under and by virtue of the statutes of said State; that said Samuel Lord is a resident of Dodge County, said James G. Armson is a resident of Washington County, and said Odin Halden is a resident of St. Louis County, all in said State; that said defendant, Clifford L. Hilton, is the duly elected qualified, and acting Attorney General of said State and is a resident of Ramsey County therein; that defendant, Raymond P. Chase, is the duly elected, qualified and acting State Auditor of said

State and a resident of Anoka County therein; and that defendant, Henry Rines, is the duly elected, qualified and acting State Treasurer of said State and a resident of Kanabec County in said State, and that all said defendants are citizens of the State of Minnesota.

(4) That defendant, Sargent Land Company, was organized for the primary purposes of receiving and uniting in one ownership the title to certain lands in the State of Minnesota until then held by its numerous stockholders in individual ownership in undivided fractional shares (the shares of some of such stockholders being extremely small), and of liquidating and converting the same into money to enable the distribution thereof to said various owners in proportion to their respective ownership interests in said lands. That, after the organization of said corporation, the title to said lands was duly conveyed to said corporation by the various owners thereof and that by virtue thereof said Sargent Land Company has been for many years last past and now is the sole owner and holder in fee of numerous tracts and parcels of land situated in the State of Minnesota, of large value; that at the time of the conveyance of said lands to said corporation, the chief value therein consisted in deposits of iron ore on some of said lands and that no substantial increase of value therein has since developed or now exists. That the articles of incorporation of said Sargent Land Company have for many years last past stated and do now state and provide that the general purposes of said corporation shall be "to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments and to own such property, and for the convenience of its stockholders, to receive and distribute among them the proceeds of any disposition of such property, at such times, in such amounts and in such manner as the board of directors may determine." That said corporation has no purpose or purposes whatsoever other than those above specified and limited in its said articles of incorporation, and that it has at all times held and now holds all said lands for such purposes, and for no other purposes or purposes whatsoever.

(5) That under its said articles of incorporation, said Sargent Land Company has not been and is not authorized to open, develop or operate mines upon its said lands, or any of them, or elsewhere, and that it has never opened, developed or operated a mine or mines, and that it never has been and is not now engaged in the business of mining of any kind or in any business or occupation whatsoever except as herein above set forth; and that its only means of liquidating such of its assets as consist of mineral lands and of effecting the purposes of its incorporation were at all said times and now are by leasing its [fol. 4] said mineral lands to be mined and operated by its said lessees, or by selling the iron ore contained therein to a purchaser or purchasers desirous of buying and removing the same, and, in the case of lands on which there are no mineral deposits, of selling the same as purchasers may be found therefor.

(6) That said corporation was at all times during the year 1923 and now is the owner in fee of several tracts of land upon which valuable deposits of iron ore exist as aforesaid the entire substantial value of which tracts consists in said iron ore. That some of said tracts were not at any time during the year 1923, and are not now, leased or mined nor has any ore been sold therefrom, and that no royalties were received for such ore as may exist therein, nor have any moneys been received for sales of ore therein, during said year 1923 or at any time. That four of said tracts on which deposits of iron exist were, however, under lease to certain lessees during portions of said year 1923 under and by virtue of four separate mining leases (of too great length for all of them to be conveniently embraced in this bill of complaint), but so far as here material, all said leases were and are in the form, or substantially in the form, of Exhibit "1" hereto attached and hereby made a part of this complaint; said Exhibit "1" being a copy of a lease executed upon one of said tracts by the predecessors or grantors of said Sargent Land Company, and which said lease and said lands therein described are now and were at all times in said year 1923 the property of said company. Said four mining leases, or any of them, will be produced by the plaintiffs upon the trial of this suit if such production be deemed desirable by the Court. That said corporation, during said year 1923, derived from the royalties payable under said leases, either by way of royalties paid to it in advance of the mining and shipment of ore from said lands (in accordance with the requirements of said mining leases) or by way of royalties paid to it by its lessees for ore actually mined and shipped from said leased lands, considerable amounts of money and will continue to receive considerable amounts of money from and on account of such royalty payments while said mining leases or any of them remain in force.

(7) That said Sargent Land Company has sold to a certain vendee the iron ore in, under and upon one of its said tracts of mineral land referred to in paragraph 6 hereof, under and by virtue of a certain written sale-agreement, a copy of which, marked Exhibit "2", is hereto attached and made a part hereof. That said corporation derived from the payments due and payable under said agreement, during the year 1923, as therein set forth certain moneys and will continue to receive certain moneys from and on account of such payments until the terms of said agreement are fully performed by said vendee; that such payments made to said corporation under the terms of said sale agreement are not and were not at any time royalties received for permission to explore, mine, take out and remove ore from said lands, but were and are the agreed purchase price, or installments thereof, paid by the vendee in said sale agreement for the ore therein described.

(8) That the allegations of paragraphs numbered 6 and 7 of this complaint are also true as respects a very large number of owners of [fol. 5] lands, and of interests in lands, containing deposits of iron ore in the State of Minnesota, other than said Sargent Land Company; and that each of said other owners will be subject to, and

affected by, the provisions of Chapter 226 of the Laws of Minnesota for 1923 hereinafter referred to, although in differing degrees, in substantially the same manner as said Sargent Land Company will be affected, as alleged in this complaint. That certain fee owners of mineral bearing lands in Minnesota, other than the Sargent Land Company operate their own properties and mine and remove the ore therefrom without paying money in the nature of royalties for the permission to explore, mine, take out and remove ore from the land.

(9) That the Legislature of the State of Minnesota, at its session of 1923, enacted Chapter 226 of the Laws of Minnesota, for said year 1923, entitled: "Act Providing for the Levy and Collection of a Tax on Royalties Received by the Owner of any Right, Title or Interest in Land Situated in This State for Permission to Explore, Mine, Take Out and Remove Ore from the Same," which Act was approved by the Governor of said State April 11th, 1923, and by its terms was to take effect and be in force from and after its passage; a copy of which Act is set out in Exhibit "3" hereto attached and made a part hereof.

(10) That said royalty tax proposed to be levied and collected under and pursuant to the provisions of said act in paragraph 9 described upon the royalties or upon the payments for ores sold, received by said Sargent Land Company in said year 1923 and which will be payable by and collected from said Company, if the provisions of said Act be enforced as threatened, will be large, and that every dollar of any such tax paid by said Sargent Land Company under the requirements of said Act will unlawfully diminish the distributive shares to which these plaintiffs, and every other shareholder of said company, are entitled in the assets of said company and will unlawfully interfere with and prevent the due carrying out of the purposes for which said Company was created, to-wit: the liquidation of its assets and the distribution of the proceeds thereof to said shareholders.

(11) This is a suit brought in equity to restrain the defendants and each of them from acting under and in pursuance of the provisions of said Act or any of them and from in any way carrying out or enforcing, or seeking to carry out or enforce, the provisions thereof or any of them, upon the ground that the provisions of said Act and each of them are in violation of the Constitution of the United States as well as of the Constitution of the State of Minnesota and are inoperative and void, in that they violate Section 1 of Article 9 of the Constitution of Minnesota providing that taxes shall be uniform upon the same class of subjects; and in that they further violate Sections 33 and 34 of Article 4 of the Constitution of the State of Minnesota prohibiting special legislation and requiring all laws to be uniform in their operation throughout the State; and in that they further violate Section 7 of Article 1 of the Constitution of the State of Minnesota providing that no person shall be deprived of life, liberty or property without due process of law; and in that they further violate the provisions of Section 13 of Article 1 of the Con-[fol. 6] stitution of the State of Minnesota providing that private

property shall not be taken, destroyed or damaged for public use without just compensation therefor first paid or secured; and in that they further violate the Fourth Amendment to the Constitution of the United States, providing that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and in that they further violate the fifth amendment to the Constitution of the United States providing that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation; and in that they further violate the provisions of the fourteenth amendment to the Constitution of the United States providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States and providing that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. That any and all acts done, threatened or attempted to be done, under the provisions of said Act by said defendants or any of them will be in violation of the said provisions of the Constitutions of the State of Minnesota and of the United States. That this suit is brought as respects also the moneys received on account of sale of ore in said sale agreement in paragraph 7 hereinabove set forth upon the further ground that any and all payments received under or on account of said sale agreement are not royalties for permission to explore, mine, take out and remove ore from the lands therein described and are not and were not at any time within or under the terms of said Act and not subject to the tax therein provided for.

(12) That the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars, in that, if the provisions of said Act be carried out and enforced, said Sargent Land Company will be required to pay in taxes on account of royalties paid under said mining leases, as well as on account of payments for ore sold, received by said Company in the year 1923, an amount in excess of the sum of Three Thousand Dollars, and will be required in each and every year thereafter, until the deposits of iron ore upon its said tracts of land are exhausted (which exhaustion, these plaintiffs are informed and believe, will not be accomplished for more than twenty years yet to come), to pay in taxes on account of such royalties and payments for ores sold, and each of them, an amount also largely in excess of the sum of Three Thousand Dollars; and that the proportion of said taxes which will be deducted from the distribution to which each of these plaintiffs will be entitled on account of their said interests as shareholders in said corporation, and its said properties, will be in excess of said sum of Three Thousand Dollars.

(13) That all real property in the State of Minnesota, not exempt from taxation, has been at all times and now is subject to an annual ad valorem tax; that all such real property has been for many years

last past and now is classified for taxation in acordance with its character and with the different rates of assessment fixed by law as applicable to the various classes of such real property; that lands containing deposits of iron ore have been for many years last past and now are assessed by law at the highest rate of assessment, to-wit: at fifty per cent of their full and true value; that a copy of the [fol. 7] statutes of Minnesota now and for several years last past in force relative to the definition of real and personal property and classification for purposes of assessment is hereby attached and set out in Exhibit "4" and hereby made a part hereof. That under and by virtue of said Statutes the full and true values of all said tracts of land belonging to said Sargent Land Company containing deposits of iron ore as mentioned in paragraphs 6 and 7 hereof, and more especially the full and true value of the ore therein contained, have been for many years last past and now are determined for purposes of taxation by said Minnesota State Tax Commission, as have been also the full and true values of all other deposits of iron ore in the State of Minnesota. That said Tax Commission has had at all said times and now has full and complete machinery for the skilful, painstaking and scientific determination of such full and true values, and that its determinations are carefully and accurately made and have been, are, and will be in the future, as these plaintiffs are informed and believe, as nearly competent and correct as the same can be made; that an annual ad valorem tax at the same rate of taxation as fixed by law for all property in the taxing district in which said tracts of land are situated has been levied against all the lands of said Sargent Land Company for many years last past upon such assessed valuations determined as aforesaid and has been so levied and assessed for said year 1923 and that such tax is now due and payable and will be paid in due course.

(14) That all personal property in the State of Minnesota, not exempt from taxation, is also subject to an annual ad valorem tax according to the classification of such property as set forth in said Exhibit "4," and that "Moneys and Credits" so-called as defined by Statute, from whatsoever source derived, are subject to a fixed annual tax at the rate of three mills upon the dollar, as set forth in said Exhibit "4"; that all of the personal property of said Sargent Land Company, and all moneys and credits belonging to said company have been duly returned by said company in each year for many years last past for purpose of taxation as required by law, and were so returned for taxation by said company in the year 1923, and will be so returned in each year hereafter so long as said company has money or credits and personal property subject to said annual tax; that the tax levied upon such moneys and credits and personal property of said company returned as aforesaid for such year 1923, became due and payable on the first Monday of January, 1924, and will be paid by said company in due course; that included in said personal property and moneys and credits belonging to said company and returned and assessed for taxation as aforesaid in said year 1923 are certain moneys received by said company to a considerable

amount from sources other than said mineral leases and said sale agreement, to-wit: sales of lots, interest on bank deposits and other sources of revenue; that all moneys on hand or received by said Company during said year 1923, from whatever source derived, were mingled and deposited in a single bank of deposit; that all such moneys so received from different sources have never been, at any of said times, and do not now bear any distinguishing earmarks or [fol. 8] characteristics, but that the same have been at all said times and are now, except so far as the same have been distributed to shareholders, mingled together without distinction as to their source or origin.

(15) That all moneys (including royalty payments derived under mining leases and payments received as instalments on sales of ore) constitute in the hands of a taxpayer in the State of Minnesota a single class only of taxable property; that no classification of moneys exists under the statutes of the State of Minnesota either with reference to the source from which the same are derived or otherwise, but all moneys received by the taxpayer in said State are for the purposes of taxation included in the single statutory class known as "moneys and credits," and the Legislature of said State has no power to classify for taxation moneys owned by a taxpayer based on the source from which said moneys are derived; that the tax which said Act purports to authorize and require to be laid upon royalties, if intended to be a tax upon the moneys received by any taxpayer as royalty "for permission to explore, mine, take out and remove ore from land" in the State of Minnesota, will if levied be unlawful and unjust as double taxation upon such royalty moneys and unlawful and unjust as imposing a tax upon moneys representing such royalties alone and in violation of the provisions of the Constitution of the United States and of the Constitution of the State of Minnesota more particularly hereinabove in paragraph (11) set forth.

(16) That, as hereinbefore alleged, said mineral-bearing tracts of land belonging to said Sargent Land Company have a large market value consisting almost entirely in the deposits of iron ore, in, under or upon said tracts, and the moneys received as royalties for permission to explore, mine, take out and remove ore from said lands, represent a conversion into money of, and a return to, said Sargent Land Company of the capital assets of such company represented by said lands, and, as such, are in the same class as other similar capital of the taxpayer, and cannot lawfully be taxed otherwise than as other capital assets are taxed; that, as a matter of fact, all of said tracts of land, and all of the iron ore in place, in, under or upon the same, are subjected to the annual ad valorem tax imposed by the State of Minnesota upon real property, and the valuation of all of said tracts of land for purposes of taxation is based chiefly upon the value of the iron ore in place upon said lands; that no provision is made in said Chapter 22[illegible] of the Laws of 1923, for deduction from the royalties proposed to be taxed under the provisions of said Act of any portion thereof as constituting a conversion and return to a taxpayer of capital assets, but the entire amount of said royalties

is required by said Chapter 226 to be taxed as receipts of the taxpayer, as income or otherwise, without recognition of the fact that the same are merely a conversion of capital assets and not an increase of property of the taxpayer; that the tax sought and intended by said Chapter 226 to be imposed upon such royalties is double taxation and unlawful and unjust, and in violation of the Constitutions of the United States and of the State of Minnesota hereinbefore specified in paragraph (11) of this complaint.

[fol. 9] (17) That if any part of the royalties received by said Sargent Land Company, under its said mining leases or its said sale-agreement, represent income to said Company, and not a mere conversion and return to said Company of its capital assets, such part of said royalty receipts is not subject to taxation under the constitution and laws of the State of Minnesota, in that the legislature of said State has never enacted a law imposing any tax upon incomes as such, and has no power under the said Constitution of the State of Minnesota to levy, assess or collect taxes upon incomes; that if the tax sought to be imposed by said Chapter 226 is intended to be a tax on income and if any part of royalties received by any taxpayer for permission to explore, mine, take out and remove, ore from land in the State of Minnesota, constitutes income, the same cannot lawfully be taxed as such in that the enactment of said Act was and is beyond the constitutional power of the legislature of the State of Minnesota, and the same was and is void, as being in violation of the provisions of the Constitutions of the State of Minnesota and of the United States specified in paragraph (11) of this complaint.

(18) That if any part of the royalties received by said Sargent Land Company under its said mining leases constitutes rents for the occupation and use, by their respective lessees, of said mineral bearing lands which are under lease, such rents in the hands of said company (and moneys similarly derived by any other taxpayer in the State of Minnesota) cannot lawfully be distinguished from the rents derived from any other description of leased property; that such royalties (if and in so far as they constitute rents), and all other moneys received as rent from other sources, immediately and ipso facto lose their identity as rents, and become, for purposes of taxation, "moneys" belonging to the taxpayer receiving the same, and are taxable only as such; that the tax proposed and intended by said Chapter 226 to be laid upon the royalties therein referred to if intended to be a tax on rents as income, will be, if and in so far as such royalties constitute rents, double taxation upon such royalty receipts, and will be unlawful and unjust and in violation of the provisions of the constitutions of the United States and of the State of Minnesota, as averred in paragraph (11) of this complaint.

(19) That if the tax sought to be imposed by said Chapter 226, is intended to be an excise tax upon the exercise of the right to grant "permission to explore, mine, take out and remove ore from land in this State," it is unlawful and void and is in violation of the provisions of the Constitutions of the State of Minnesota and the United

States, and each of them, specified in paragraph (11) of this Complaint.

(20) That if the tax sought to be imposed by said Chapter 226, is intended to be a tax on the lands in Minnesota covered by mining leases or by any other agreement authorizing the exploration, mining, taking out or removing ore therefrom, it is a tax in addition to the ad valorem tax hereinbefore mentioned and is double taxation and is not uniform upon the same class of subjects, in that it is laid only [fol. 10] upon those lands containing ore from which royalties may be derived, and constitutes an arbitrary and unreasonable method of levying a tax thereon, without any proper or equitable relation to the actual value of the lands either as determined by the said Minnesota Tax Commission, as hereinbefore alleged, or otherwise, and is unlawful and void and in violation of the provisions of the Constitutions of the State of Minnesota and the United States, and each of them, specified in paragraph (11) of this Complaint.

(21) That on the 2nd day of January, 1924, at a duly convened meeting of the Board of Directors of said Sargent Land Company, at which a quorum of the directors of said Company was present, it was moved that the directors, in behalf of the corporation, refuse to observe and comply with the provisions of section 3 of said Chapter 226 of the Laws of 1923, in respect of the making and filing, with the Minnesota Tax Commission, of the verified report therein required to be made, and refuse to pay any tax that may be fixed as due and payable from said corporation by the Tax Commission of the State of Minnesota under the provisions of Section 6 of said Chapter 226, upon the ground that said Chapter 226 was and is unconstitutional and void, and in violation of the provisions of the Constitutions of the State of Minnesota and of the United States specified in paragraph (11) of this complaint; that said motion was voted down by said Board of Directors, and thereupon said Board of Directors, by the vote of a majority of the full number of the Board adopted a resolution authorizing and instructing the proper officers of said corporation to comply with all provisions of said Chapter 226 required to be observed and complied with by said corporation; that said corporation and its officers purpose and threaten to make the report required by section 3 of said Chapter 226, and to pay any tax imposed and fixed under the provisions of said Chapter 226 upon all royalties and upon all payments under or by virtue of said ore sale agreement, received by said corporation during the year ended December 31, 1923, and that, unless restrained by this Court, said corporation, acting through its said officers, will make and file such report, and will thereafter pay the tax upon such royalties and upon such payments under said sale agreement, received by the corporation during the said year, and that thereby the funds and assets of said corporation will be unlawfully depleted and the value of the shares of its capital stock will be decreased, and these plaintiffs and other owners of shares of capital stock of said corporation will be unlawfully deprived of their property.

(22) That the defendants Samuel Lord, James G. Arnson and Odin Halden, acting as the Minnesota Tax Commission, as required under Section 5 of said Chapter 226, threaten to and will on or before May 1, 1924, determine the amount of the tax including penalties thereon, if any, and levy the same upon all the royalties and moneys received by said Company in said year 1923 under and by virtue of said leases, and that they threaten to and will levy such tax as well upon all moneys received by said Company in said year 1923 under and by virtue of said ore sale agreement hereinabove set forth, upon the ground that said last named moneys are "royalties" within [fol. 11] the meaning of said Act, that they threaten to and will certify such tax and the amount thereof to the defendant Raymond P Chase, as State Auditor, who as required by Section 9 of said Chapter 226 threatens to and will make his draft upon said Company for the amount so certified and place the same in the hands of the defendant, Henry Rines, as State Treasurer, for collection. That defendant, Henry Rines, as State Treasurer, as required by Section 11 of said Chapter 226 threatens to and will attempt to collect said draft, and upon the refusal of said Company to pay the same, deliver the same to the defendant Clifford L. Hilton, as Attorney General. That said Clifford L. Hilton, as Attorney General, as required by Section 10 of said Chapter 226, threatens to and will bring action thereon against said Company for the amount of such draft, together with interest, penalties and costs. If judgment is obtained against said Company in said action, the same will, under the provisions of said Chapter 226, bear interest at the rate of 1 per cent per month, which said amount will be in the nature of and will in fact be a penalty upon said Company. That said persons defendant will severally so act wrongfully and unlawfully unless restrained therefrom by order of this court; that any such taxes so paid by said Corporation cannot be recovered back by said Corporation or any one and that these plaintiffs herein would suffer irremediable damages and injury thereby; and that plaintiffs have no plain, adequate or complete remedy at law.

Wherefore plaintiffs pray this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. That said defendant Sargent Land Company, its officers and agents and each of them be enjoined and restrained from making and filing with the Minnesota Tax Commission the verified report in respect of the royalties or moneys received by said Corporation during said year 1923 under or by virtue of said leases and/or said ore sale agreement, as required by Section 3 of said Chapter 226 of the Laws of 1923 of the State of Minnesota or otherwise; and from paying the tax or any part thereof that may be assessed again said Corporation under or by virtue of said Chapter 226 and from taking any procedure or steps whatsoever to observe and comply with said Act or any part thereof; and that an order restraining said defendant Sargent Land Company, its officers and agents and each of them from so acting be issued upon the filing of this complaint together with a temporary

injunction to like effect against them and each of them during the pendency of this action.

2. That all other defendants, other than said Sargent Land Company, be enjoined and restrained from levying, collecting or enforcing by suit or otherwise, any tax or any penalties upon such tax under or by virtue of the provisions of said Chapter 226 of the Laws of 1923 of the State of Minnesota, and from taking any action to interfere with or harass defendant, Sargent Land Company, or its officers, agents, servants or representatives, with reference to disclosing or furnishing information to the said defendants composing the Minnesota Tax Commission; and from taking any procedure whatsoever [fol. 12] as against defendant, Sargent Land Company, under or by virtue of the terms of said Act; and that an order restraining said defendants and each of them from so acting be issued upon the filing of this complaint together with a temporary injunction to like effect against them and each of them during the pendency of this action.

3. That the said statute, Chapter 226 of the Laws of 1923, of the State of Minnesota, be declared invalid and the defendants be perpetually enjoined from taking any action whatsoever under the provisions thereof, and that defendants, other than said Sargent Land Company, be perpetually enjoined from levying any tax against defendant, Sargent Land Company, or attempting to create, under or by virtue of said statute, any cloud upon the title to any of the property belonging to the defendant, Sargent Land Company, or in or to which it has any right, title or interest.

4. For such other and further relief as to the Court may seem just and proper.

John R. Vanderlip, Fred B. Snyder, Edward C. Gale, Solicitors for Plaintiffs, 800 Security Building, Minneapolis, Minnesota. Snyder, Gale & Richards, of Counsel.

Sworn to by Fred B. Snyder. Jurat omitted in printing.

[fol. 13] EXHIBIT NO. 1 TO BILL OF COMPLAINT

Mining Lease

This indenture, made this eighth day of January in the year 1902, by and between Frank H. Carleton, Carl K. Bennett and Charles M. Amsden, as Executors of the Last Will and Testament of George A. Pillsbury, deceased; Mary A. Pillsbury, John S. Pillsbury, Jr., and Charles S. Pillsbury and Nelle W. Pillsbury, his wife; Mahala F. Pillsbury, widow, Alfred F. Pillsbury, Sarah P. Gale and John P. Snyder (by his general guardian, Fred B. Snyder) only heirs at law of John S. Pillsbury, deceased, and Eleanor F. Pillsbury, wife said Alfred F. Pillsbury, and Edward C. Gale, husband of said Sarah P. Gale; Alfred F. Pillsbury, Fred B. Snyder,

Frank H. Carleton and Edward C. Gale, as administrators of the estate of John S. Pillsbury, deceased; Russell M. Bennett and Helen H. Bennett, his wife, all of Minneapolis, Minnesota; and John M. Longyear and Mary H. Longyear, his wife, of Marquette, Michigan, parties of the first part, and Edmund J. Longyear, of Hibbing, Minnesota, party of the second part, witnesseth:

That said parties of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter made, do hereby lease and demise unto said party of the second part all that certain parcel or tract of land situated in the county of St. Louis and state of Minnesota, particularly known and described as follows:

The northwest quarter of the northwest quarter (N. W. ¼ of N. W. ¼) of Section Five (5); and the southeast quarter of the northeast quarter (S. E. ¼ of N. E. ¼) of Section Six (6); all in Township fifty-seven (57) north, of Range twenty (20) west of the Fourth Principal Meridian.

Said lands are leased and demised unto said party of the second part for the purpose of boring, digging, exploring for, mining, taking out and removing all the merchantable iron ore that may be found therein or thereon, together with the right and privilege of erecting, making and maintaining on said lands all such buildings, machinery, excavations, openings, ditches, drains, railroads, tramways, wagon roads, and other improvements and fixtures as shall be necessary or convenient and useful for the purpose of such exploring for, or mining and removing, said iron ore which may be found on said premises together with the right, during the continuance of this lease, to cut and use all the timber, other than pine, which may be lying, standing, or being upon said lands, free and without charge, so far as may be necessary for fuel and the construction of buildings required in the operation of any mine or mines upon said lands, and for drains, tramways, supports, and shafts of or within any such mine or mines, or in connecting the same with any line or lines of railroad on or over which said ore may be transported. [fol. 14] To have and to hold said lands to said party of the second part, for the uses and purposes aforesaid, for and during the term of fifty (50) years, which shall commence upon the first day of January, 1902, and shall end upon the 31st day of December, 1951, or until this lease and demise shall be terminated in the manner hereinafter provided, said party of the second part truly and faithfully keeping, observing and performing each and every of the covenants, agreements and promises by and on the part of said party of the second part in this indenture made, and all the conditions hereinafter set forth and on the part of said party of the second part to be kept, observed and performed. And the said parties of the first part do hereby covenant to and with the said party of the second part, that they are, at the time of the ensealing and delivery of this indenture, lawfully seized in fee simple of the above leased and demised premises, that the same are free from all incumbrances,

and that they will said party of the second part, in the peaceable and quiet possession of the said leased and demised premises, and each and every part thereof, during the term aforesaid, or until the termination of the said lease and demise as herein provided, warrant and defend against the lawful claims and demands of all persons, provided the party of the second part shall keep, observe and perform each and every of the covenants, promises and agreements and conditions in this indenture on the part of said party of the second part made or to be kept, observed or performed.

But the foregoing lease and demise is made upon the express condition that the said party of the second part shall pay unto the said parties of the first part, their heirs, successors or assigns, as rent or royalty, at the times hereinafter stated, the moneys and sums hereinafter set forth or specified for each and every ton of iron ore removed from said premises during the term aforesaid of said lease and demise, to-wit: For every ton of iron ore taken out, mined or carried away from said lands and premises, the royalty to be paid to the parties of the first part shall be the sum of twenty-five (25) cents; and said party of the second part shall make and render the statements hereinafter specified to be by him made and rendered, at the times hereinafter stated therefor, and shall keep, observe and perform each and every of the covenants, promises and agreements hereinafter made, and on the part of the party of the second part to be kept, observed and performed.

Said second party expressly covenants and agrees to mine out clean as it goes all of the merchantable iron ore in the mines or ore deposits opened on said premises, allowing only for usual and reasonable waste; it being the intention of the parties hereto, and the meaning of this lease, that whereas certain of the iron ore underlying or upon the premises hereby leased is supposed to be richer in metallic iron and lower in phosphorus contents than other portions of the ore upon said premises, the said party of the second part shall not discriminate between any of said ores in his operations upon said premises, but shall remove the entire ore deposit which may be merchantable, as it goes, from the level or levels on which the mining operations are or shall be conducted to the surface of the ore deposit.

[fol. 15] The second party further agrees that he will make weekly reports, in triplicate, of any and all exploratory work conducted by him upon said leased premises, showing accurately, by map or plat, the location of all test-pits and drill-holes (which shall be numbered consecutively and may thereafter be referred to by number), and stating the progress of the work at each pit or drill-hole, the character of the formation encountered or passed through, and, if ore be found, said second party shall take samples thereof at least every ten (10) feet in depth of all ore bodies, shall make assays thereof, and report the same forthwith to the first party. All such reports shall be sent each week to Russell M. Bennett, at Minneapolis, Minnesota, to Alfred F. Pillsbury at Minneapolis, Minnesota, and to John M. Longyear, at Marquette, Michigan.

The second party further covenants and agrees that all the earth,

stones and other debris and waste excavated or removed in the process of exploring or mining, or in any other work, operations or improvements above authorized, shall be so deposited, and all the work and operations on said premises shall be so carried on and completed that the same shall not hinder or render dangerous or unreasonably inconvenient the future explorations of said premises for ores and minerals, or the continuation of the operations or work of mining thereon, and in such manner only as is usual or approved by experienced and skillful miners, having due reference to the future and permanent value of said premises as an iron mine.

That said party of the second part will cause all iron ores removed from said premises to be weighed by the railroad corporations that shall transport the same, and will furnish the parties of the first part each month with the certificate or statement of such corporation showing the weights of all such ores transported during the month preceding; that any certificate or statement in writing of any agent of any railroad corporation that said corporation has received for transportation any iron ores from said lands, at any time or times, and of the weights thereof, and any copies or transcripts from the books of any such corporation relating to the transportation or weights of such ores, as aforesaid, shall, as against said party of the second part, be prima facie evidence of the facts so stated or appearing in any suit at law or in equity, or in any controversy between said parties hereto, or their successors, representatives or assigns, in and before any court, reference or arbitration.

It is further covenanted and agreed that, in case any ores or minerals other than iron are discovered on the premises hereby demised, by the party of the second part, or in case of the discovery of any mixtures or combinations of ores or minerals which shall have a greater market value than iron ore, the second party is hereby expressly granted the right to mine and remove the same; and for all such other ores, minerals, mixtures or combinations taken out, mined or carried away by him, the party of the second part shall pay to the parties of the first part, as royalty, thirty-three and one third (33⅓) per cent of the marketable value or selling price thereof, at the market or markets therefor, less all transportation charges, which shall first be deducted from such market or selling price; and such royalty shall [fol. 16] be due and payable at the same times and in the same manner that royalty on iron ore shall be due and payable under the terms of this lease; and reports of the kind, quality and quantity of such other ores, minerals, mixtures or combinations, and of the market or selling price thereof at the place of market, and of all transportation charges thereon, shall be made at the same time and in the same manner provided in this lease in regard to reports upon iron ore, and such other ores, minerals, mixtures and combinations shall be subject, in like manner as iron ore, to all the terms and conditions of this lease.

Said party of the second part further covenants and agrees, between the first and twenty-fifth days of each and every month during the term aforesaid, or until the termination of this lease and demise, to make and render to said parties of the first part, their heirs,

executors, administrators or assigns, a true report, stating therein the quantity of all ores and minerals mined and shipped from said land since those reported in the last preceding statement.

And said party of the second part does hereby covenant, promise and agree to and with the said parties of the first part, their heirs, executors, administrators and assigns, that said party of the second part will well and truly pay unto said parties of the first part, their heirs, executors, administrators and assigns, the rent and royalty above specified, stated or set forth, at the times following, to-wit: On the twenty-fifth day of each month during the said term, or until this lease and demise shall have been terminated as herein provided, upon and for all such ores as shall have been removed from said premises during the calendar month next preceding that in which said rent or royalty becomes so due and payable.

And it is further covenanted and agreed by and between the parties hereto that the said lands are now owned in fee simple by the said parties of the first part in the following proportions, to-wit: The devisees of George A. Pillsbury, deceased, and their assigns, own an undivided one-sixth interest thereof; Mary A. Pillsbury, John S. Pillsbury, Jr., and Charles S. Pillsbury, own an undivided one-sixth interest thereof; the heirs of John S. Pillsbury own an undivided one-sixth interest thereof; Russell M. Bennett owns an undivided one-fourth interest thereof; and John M. Longyear owns an undivided one-fourth interest thereof.

The undivided one-sixth interest in said lands above referred to as belonging to the devisees of George A. Pillsbury, and their assigns, was owned by the said George A. Pillsbury at the time of his decease, and by his last will and testament he devised the same, one-third to his widow, Margaret S. Pillsbury, one-third to his son Charles A. Pillsbury, and one-third to the four children of his deceased son, Fred C. Pillsbury, in equal shares, with a provision that the shares of said children of Fred C. Pillsbury should be held by the executors of said George A. Pillsbury, deceased, in trust, until the said children should respectively arrive at the age of twenty-five years, and with a further provision that, in case any of said children of Fred C. Pillsbury did not arrive at the age of twenty-five years, their share should go to the survivors of said children.

The interest in said premises so devised to Charles A. Pillsbury [fol. 17] was, by decree of the Probate Court of Hennepin County, Minnesota, duly assigned and distributed to Mary A. Pillsbury, Charles S. Pillsbury and John S. Pillsbury, Jr., in equal shares.

By the said will of George A. Pillsbury, his executors were given power to lease any premises owned by said George A. Pillsbury, as will more fully appear by the record of a certified copy of said will in the office of the Register of Deeds of St. Louis County, Minnesota, in Book 176 of Deeds beginning on page 188. No decree of distribution has yet been made in the estate of said George A. Pillsbury, and the said power to lease said premises by said executors is in full force and effect, and all rents rights, royalties and privileges herein reserved to the said estate of George A. Pillsbury, or the executors of said estate, belong to, are reserved for, and are to be paid to, the re-

spective devisees under the will of George A. Pillsbury, and their assigns, as hereinbefore set forth, and in the proportion as hereinbefore stated.

All payments of rent or royalty are to be made to the said parties in the proportions above stated, and in accordance with the notice herein provided for; and in case of any transfer of the interests of said owners, or any or either of them, payments of the shares so transferred, after notice to the party of the second part of such transfer, shall be made to the respective transferees.

It is further covenanted and agreed that said party of the second part, in making the reports to the parties of the first part, as herein provided, shall furnish to each of said owners a copy of such reports, at the time and in the manner herein provided.

The several payments required to be made by said party of the second part to said parties of the first part, shall be made at such bank or banks, in the city of Minneapolis or elsewhere, as the said parties of the first part, or their legal representatives or assigns, may, respectively from time to time in writing designate; and the bank or banks so designated shall be considered and treated as the agent or agents of the said parties of the first part, respectively, for the purpose of collecting and receipting for such payments.

For the rights, privileges and easements hereinabove granted, leased and demised, of entering upon said land and digging and exploring the same for iron ores, and in consideration thereof, said party of the second part does hereby further covenant, promise and agree to and with said first parties, that said party of the second part will pay to said parties of the first part, their heirs, executors, administrators and assigns, from and after the first day of July, 1902, the annual rental of eighteen thousand seven hundred and fifty ($18,750.00) dollars, in equal quarterly payments of four thousand six hundred and eighty-seven dollars and fifty cents ($4,687.50), payable in advance on or before the 25th day of July, October, January and April in each and every year during the said term, or until this lease shall have been terminated in the manner herein provided, whether any iron ores shall have been mined on or removed from said land, or whether any iron ore is known to, or does in fact, exist therein, or not; it being understood, however, that said quarterly rent of four thousand six hundred and eighty-seven dollars and fifty cents ($4,687.50) need not be paid in any quarter when royalties [fol. 18] paid in the preceding quarter by the party of the second part on iron ore actually mined and removed from said lands as herein stipulated, shall equal or exceed such quarterly rent of four thousand six hundred and eighty-seven dollars and fifty cents ($4,687.50); and when in any quarter year ending on the last day of September, December, March or June, the royalty paid by the party of the second part on iron ore mined and removed from said lands shall amount to less than the rental already paid for such quarter, the party of the second part shall be required to pay, at the time of the next quarterly payment of rent, only the difference between the royalty so paid and said quarterly rent of four thousand six hundred and eighty-seven dollars and fifty cents ($4,687.50); and all rent

paid by the party of the second part under this lease shall be credited to him and shall be applied to the reduction and payment of any excess over said quarterly sum of four thousand six hundred and eighty-seven dollars and fifty cents ($4,687.50) that may thereafter become due and payable under this lease as royalties on iron ore mined and removed by the party of the second part from said land, until said credit shall be exhausted; the intent of the parties hereto being that, in consideration of this lease, the second party shall pay to the first parties, their heirs, executors, administrators or assigns, as aforesaid, on or before the quarter days hereinbefore stated, in each quarter year during the continuance of this lease (reckoning from January 1st, 1902) the sum of not less than four thousand six hundred eighty-seven dollars and fifty cents ($4,687.50) by way of royalties for ores actually mined and removed during such quarter year, or (reckoning from July 1, 1902) shall pay said sum by way of rent for the use and occupation of said lands; but the second party shall be credited with all sums so paid by him which shall not be paid by way of royalty for ores actually mined and removed from said premises, and may apply such credits in reduction of any sums thereafter accruing for royalties in any subsequent quarter-year in excess of said minimum of four thousand six hundred and eighty-seven dolars and fifty cents ($4,687.50) payable in each of such quarter-years.

The party of the second part further covenants to pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands hereby demised and on the iron ore mined therefrom, and on all improvements and personal property thereon, while this lease shall remain in force, to pay the same as the same shall become due and payable, and to furnish the parties of the first part with duplicate tax receipts showing the payment of all such assessments or taxes: Provided, however, that the party of the second part shall always have the right to contest in the courts, or otherwise, the validity of any such tax or assessments in case he shall deem the same unlawful, unjust, unequal or excessive, or to take such other steps or proceedings as he may deem necessary to secure a cancellation, reduction, readjustment or equalization thereof before he shall be required to pay and discharge the same or any part thereof; but, provided further, that the party of the second part shall not permit or suffer said lands and property, or any part thereof to be sold at any time for any taxes or assessments.

That said party of the second part shall not commit, or suffer to [fol. 19] be made, and waste of said premises, nor sub-lease nor under-let the same, nor any part thereof (nor suffer any other person or persons to use or occupy the same, servants, employes, agents or contractors of said party of the second part excepted,) nor assign this lease, or the interest of the party of the second part therein, except with the consent of the parties of the first part, or those having their estate in the premises, first obtained in writing: Provided, however, that said party of the second part, or his assignee shall have the right to sublet portions of the surface of said land

ments of movable personal chattels, shall wholly cease and be terminated, and all right and title in such ores, timber, machinery, fixtures, improvements and movable personal chattels shall vest and be and remain in the parties of the first part, their heirs, executors, administrators and assigns, absolutely and forever.

It is hereby further covenanted, agreed and understood by and between the parties hereto that said party of the second part may terminate and surrender this lease and demise at any time, by giving the parties of the first part, or those having their estate in the premises, written notice of intention so to do sixty (60) days at least before such termination, and executing, acknowledging and delivering to said parties of the first part, their heirs, executors, administrators or assigns, a sufficient deed of release of all interest and rights of said party of the second part in said demised premises, and the improvements that may be thereon, duly signed, sealed and acknowledged by said party of the second part, and surrendering to the said parties of the first part, their heirs, executors, administrators and assigns, said premises and improvements, in good order and condition, damage by fire or other casualty which could not, by reasonable and ordinary care, have been prevented, excepted, together with all ores then thereon, and thereupon all liability of said party of the second part for any taxes subsequently assessed on said demised premises, or for rent thereof thereafter to accrue, or royalty on ores therefrom, except on account of ores removed, shall cease and be determined: Provided, however, that said party of the second part shall be liable to and shall pay said parties of the first part, their heirs, executors, administrators or assigns, for, or on account of, all ores removed from said premises and not theretofore paid for, as hereinbefore provided, the royalty thereon hereinabove set forth: to make and render all and the same reports, statements and certificates respecting the same hereinabove stipulated or agreed to be made during the continuance of said lease or demise, and shall pay for said premises, as aforesaid, rent or royalty for the year in which said termination shall be made, or the portion thereof which shall have expired at the time of said termination, at the rate of at least eighteen thousand seven hundred and fifty ($18,750.00) dollars per annum

It is hereby further covenanted, agreed and understood by and between the parties hereto that said parties of the first part, their heirs, executors, administrators and assigns, shall at all times have, possess and hold a lien upon all movable machinery, implements and personal chattels of said party of the second part that shall be on said premises, as security for the faithful discharge and performance of all agreements, covenants or conditions binding upon said party, and for the payment of the rents, royalties and taxes above mentioned, and for any moneys that may be due or owing under this indenture, and if default be made in the payment of such rent, royalty or taxes, or in the payment of any installment thereof, as [fol. 21] herein provided or in the performance and discharge of any of said agreements, covenants or conditions, the said parties of the

for stock-pile ground to persons, firms or corporations to whom he may sell or pledge his interest in iron ore mined on said premises, subject to the rights of the parties of the first part therein under this lease, for the purpose of storing thereon the ore so sold or pledged.

And said party of the second part further covenants and agrees that at the end of said term, or other termination of this lease or demise, he will peaceably surrender said premises to said parties of the first part, or those having their estate therein, with all the stopes, supports, shafts and other improvements and erections that may be made thereon (tools, implements and other movable personal chattels herefrom excepted), in good order and condition; that said parties of the first part, their heirs, executors, administrators and assigns, and their agents and servants, may, at all reasonable times, enter upon said premises, or any part thereof, peaceably, and view the same, and take all reasonable means to ascertain the condition thereof, and the kind, qualities and quantities of ores therein or removed therefrom, not thereby unreasonably or unnecessarily hindering said party of the second part; that if said party of the second part shall neglect to make any report or statement, or to furnish any statement, or to pay any rent, royalty, or taxes herein covenanted, promised and agreed by said party of the second part to be made, furnished or paid, at any time or times when the same should be made, furnished or paid, as herein agreed or stated, or if said party of the second part shall commit or suffer any breach of any covenant, promise or agreement of the party of the second part herein made, and such neglect to make or furnish such reports or statements, or to make such payment, or any breach of such covenants, promise or agreement shall continue for a period of fifteen (15) days after notice in writing given by the parties of the first part to the party of the second part, specifying the default, neglect and failure complained of, then said parties of the first part, or those having their estate in the premises, may, at any time thereafter, and while such default or neglect shall continue, without further notice or demand, and with or without any process of law or judgments, enter into and upon said premises, or any part thereof in the name of the whole, and take, have and hold possession thereof as of their former estate, together with all the ores, timber, machinery, fixtures, improvements and personal property that may be thereon, and the said party of the second part, and all persons holding or claiming under said party of the second part, eviet, expel, remove and exclude therefrom, forcibly if necessary, without being taken or deemed guilty of any manner of trespass, and without prejudice to any other action or remedy which said parties of the first part, their heirs, executors, administrators or assigns might otherwise have in law or equity, or otherwise, for any preceding breach of covenant, promise or agreement, or for rent or royalty, or for the recovery of possession of said premises, and thereupon all right of said party of the second part, and all persons holding or claiming under him in said premises, or any part thereof, or in any of said ores, timber, machinery, fixtures and other improve-

[fol. 20]

first part, their heirs, executors, administrators or assigns, are hereby authorized to enter upon the said premises above described, or into and upon any place where the said movable machinery and personal property shall be, and take the same into their possession, and sell and dispose of the same at private sale, without notice, or at public sale after giving ten days' notice of the time and place of such sale, in the manner then required by law for sheriff's sales, in their discretion, and at said sale to sell all the said movable machinery and other personal chattels above named in one lot, or in such lots as they may think fit, and out of the money arising from such sale retain the sum or sums due for damages or otherwise, together with the interest and all the costs and expenses of such sale or sales, rendering the surplus, if any, to the party of the second part, his successors or assigns.

It is further covenanted and agreed between the parties hereto that said parties of the first part, their heirs, executors, administrators and assigns, shall have and retain the title to all ore mined from said premises, whether said ore shall be upon the premises hereby leased or shall have been shipped away, until all royalty, rent and taxes then due under this lease shall be fully paid, and all the agreements, covenants and conditions hereof obligatory upon the second party shall be in all things observed and performed. And whenever any such rent, royalty or taxes shall be due or remain unpaid as aforesaid, or any breach or default shall have occurred, or shall exist, on the part of the second party, as to any of the terms, covenants or conditions of this lease, the right of the party of the second part to remove and take away ore from said premises shall thereupon be and remain suspended until such rent, royalty or taxes shall be paid, and until such terms, covenants or conditions have been faithfully performed or discharged by the second party; and whenever default shall be made by the second party in payment of royalty, rent or taxes as aforesaid, or in any agreement, covenant or condition of this lease, the parties of the first part, their heirs, executors, administrators and assigns shall have the right to revoke all power of further sales of ore, whether still remaining upon said premises or wherever the same may be situated, until the sums so due are paid and all the provisions of this lease are fully observed and performed by the second party; and upon notice given by the first parties, their heirs, executors, administrators or assigns, to the second party, in writing of such default, specifying the same particularly, all further removal and sales of ore then remaining on said premises shall cease until full payment shall be made of such rent, royalty or taxes in arrears, and full performance and discharge of all said agreements, covenants and conditions or until the same are secured to the satisfaction of the parties of the first part.

Upon the occurrence of any such default, said parties of the first part shall have the further right to take possession of any and all ores mined from or upon said premises, wherever the same may be, and to sell and dispose of the same, or sufficient thereof to raise the amount due and in arrears for rent, royalty and taxes as aforesaid, either at public or private sale, in the manner hereinbefore set forth

for the sale of personal property under the lien herein provided for. [fol. 22] It is hereby further covenanted and agreed by and between the parties hereto that all buildings, engines, boilers, tramways, hoisting apparatus and other erections, improvements, fixtures and machinery, that at the time of the commencement of said term shall be upon the premises herein demised, which belong to said party of the second part or which said party of the second part, or any person or party claiming, occupying, operating or controlling said premises by, through or under said party of the second part, shall construct or place thereon during said term, shall become and be a part of and belong to the land, freehold or realty, and said party of the second part, or any person claiming under him, shall have no right to destroy, take down, remove or injure the same, except for the purpose of replacing the same with other of equal or greater value, and equal or greater efficiency, as, in the judgment in the party of the second part, the exigencies of the mining business on said premises may require, without the consent thereto of said parties of the first part, or those having their estate in said premises, first obtained in writing; and upon the termination of the foregoing lease, either by expiration of said term, or by notice and deed of release given by said party of the second part, as hereinabove provided, and upon full performance of all the covenants, agreements and conditions in this indenture made and set forth, and on the part of said party of the second part to be kept, observed and performed, and upon full payment of all sums of money required by this lease to be paid by said party of the second part to said parties of the first part, said parties of the first part, or those having their estate in the premises, shall and will give and grant unto said party of the second part, by instrument in writing in due form, full and perfect right as against said parties of the first part, and all persons claiming under them, to remove from said premises within sixty (60) days after such termination of said lease, and to have, as and for his own property, all buildings and railroad tracks on the surface of said land, and all pumps, engines, boilers, hoisting apparatus and other machinery, tools and implements ordinarily removable as tenants' fixtures, and chattels personal, which shall have been placed on or in said premises by the party of the second part or his assigns.

It is further covenanted and agreed by the parties hereto that the second party shall not execute any mortgage trust-deed, lien or incumbrance on any ore mined or on said land, or allow any lien or incumbrance to attach thereto, which mortgage, trust-deed, lien or incumbrance shall not, by its terms, be expressly subject to the rights of the said parties of the first part herein, and to their paramount right to enforce the performance of all the agreements, covenants and conditions obligatory upon the second party, as well as the payment of the royalty rent or taxes to be paid by said party of the second part as provided in this lease, against the same; and, in case any mortgage, trust-deed, lien or incumbrance shall contrary to this covenant and agreement, be created by the party of the second part, or attach to any portion of said property, then and in such

case, said parties, of the first part shall have the right to immediately declare a forfeiture of this lease, and all rights of said party of the second part, or those claiming under him, hereunder, or in said [fol. 23] ores, and to enter upon said lands and take possession thereof and said party of the second part to remove therefrom, and also to take possession of all ores, machinery, improvements, fixtures, and all personal property of every kind, situated on said lands or elsewhere, belonging to said second party, and enforce the payment of said royalty, rent and taxes therefrom, as hereinbefore provided, and all other terms, covenants and conditions hereof to be performed by the party of the second part.

It is further covenanted and agreed that if the said party of the second part, or his assigns, shall become insolvent during the life of this lease, or while any ore mined from said premises remains unsold, said parties of the first part, their heirs, executors, administrators or assigns, shall have the right to demand payment of the royalty thereon, and all rent and royalty then accrued and remaining unpaid, whether due or not, and all taxes from the then current year, and all other sums which shall be, under the terms of this lease, a charge against such ore or that the same shall be secured to the satisfaction of said parties of the first part, their heirs, executors, administrators or assigns, in advance of and as a condition of the shipment of any ore mined upon or from said premises, or the removal of any buildings, engines, boilers, tramways, hoisting apparatus or other improvements, fixtures, machinery or personal chattels upon said demised premises.

And it is further covenanted and agreed that, in case the said party of the second part, or his assigns, shall give notice of his or their intention to surrender this lease, or upon the termination of this lease by lapse of time, or otherwise, or in case the ore in the mine or mines on the said premises shall become exhausted, said parties of the first part, their heirs, executors, administrators or assigns, shall have the right to demand the payment of all such accrued rent or royalty, and all royalty upon any ore mined from or upon said premises, wherever situated, and all taxes for the current year, and all other sums that shall be a charge against such ore under the terms of this lease, or that the same be satisfactorily secured in advance of and as a condition of any further shipments of such ore.

It is understood and agreed between the parties hereto that all notices required by this lease to be given by the parties of the first part to the party of the second part, or his assigns, may be served by delivering the same personally to said Edmund J. Longyear, or, at the option of said parties of the first part, by depositing the same in any postoffice in the United States, addressed to said party of the second part at the place where his last known principal business office is situated, postage prepaid.

It is further covenanted, agreed and understood between the parties hereto, that this lease, and the covenants, agreements and conditions herein contained, shall run with the land, and shall be binding upon the successors and assigns of the parties hereto, respectively.

It is further agreed that the word "ton" wherever used herein shall be construed to mean a long ton of two thousand, two hundred and forty (2240) pounds avoirdupois.

In witness whereof, this indenture has been executed by the parties hereto, the day and year first above written.

[fol. 24] EXHIBIT No. 2 TO BILL OF COMPLAINT

Sales Contract of Ore

Contract made this first day of January, 1918, by and between Sargent Land Company, a corporation of the State of Minnesota, having its principal office in the city of Minneapolis, vendor, and —— ——, a corporation of the State of New Jersey, having its office for the service of notices, etc., hereunder in the city of ——, vendee.

Article I.—Description of Property

The vendor is the owner in fee simple of the following described lands situated in the County of Itasca, State of Minnesota, to-wit:

The Southeast quarter (S. E. ¼) of Section twenty-three (23) and the West half of the Northeast quarter (W. ½ N. E. ¼) of Section twenty-six (26), all in Township fifty-seven (57) North, of Range twenty-two (22) West.

The title to said described lands was, on the 25th day of June, 1915, duly registered under the statute of the State of Minnesota concerning the registration of land and the title thereto, as evidenced by certificate of title Number 378, issued by the Registrar of Titles in and for the County of Itasca and State of Minnesota, subject only to the following encumbrances, to-wit:

1. An easement for right of way for railway purposes owned by the Great Northern Railway Company upon and over a strip of land one hundred (100) feet in width across the Northeast quarter of the Southeast quarter (N. E. ¼ S. E. ¼) of said Section twenty-three (23).

2. An easement for right of way for railway purposes owned by said Great Northern Railway Company over and upon a strip of land one hundred (100) feet in width over and across the Southwest quarter of the Northeast quarter (S. W. ¼ N. E. ¼) of said Section twenty-six (26).

3. Said easements for right of way are subject to the lien of a mortgage or trust deed thereon executed by said Great Northern Railway Company to the Bankers Trust Company recorded in the office of the Register of Deeds of Itasca County, Minnesota, in Book T of Mortgages at page 379, to which reference is hereby made.

Article II.—Vendor's Agreement to Sell.

In consideration of the sum of one dollar ($1.00) to it in hand paid by the vendee, the receipt of which is hereby acknowledged, and in further consideration of the payments by the vendee, in the installments herein specified, of the purchase price of said iron ore, and in consideration of the covenants, agreements and conditions herein expressed to be kept and performed by the vendee, the vendor [fol. 25] hereby sells to the vendee all of the iron ore in, under or upon the lands above described, on or before the expiration of fifty (50) years from the first day of January, 1918 (which period will expire December 31st, 1967), in accordance with the terms and conditions herein expressed; and the vendor further gives and grants to the vendee the right to enter upon said lands, and any part thereof, for the purpose of exploring for, mining and removing said iron ore, with full right and authority to construct all buildings and to lay and maintain pipes for the conveyance of water, and to make all excavations, openings, ditches, drains, railroads, wagon-roads and other improvements thereon suitable for mining, removing, washing, screening or otherwise separating from silica, sand, waste and other foreign substances said iron ore, and of cutting and using any timber upon said premises for any of the purposes aforesaid; and the vendee shall have the right to strip, or cave or sink shafts as may be necessary and adapted to the form of mining used by the vendee in mining and removing said ore, and the right to stockpile ore thereon, and to dump earth, rocks and waste of all kinds removed by it from said premises in exploring for, mining and removing said ore, without liability on the part of the vendee for the destruction of the surface of said lands or injury of the same, by reason of such stripping, caving or settling or by the deposit of such earth, rocks or waste; provided, however, that such earth, rocks or waste shall be deposited only upon such parcel or parcels of said land as shall be agreed upon, from time to time, by the parties hereto, as hereinafter stated.

The vendee shall likewise have the right, free and without charge, to erect on any unused portion of the surface of the said lands, and to use, occupy and enjoy, all necessary or convenient store-buildings, boarding and dwelling houses, but, in every case, any such use and occupation shall absolutely cease and determine upon the termination of this contract, and all such store buildings, boarding and dwellings houses may be removed from the said land within the time, and subject to the conditions provided in Article XVI hereof.

Article III.—Covenants of Title

The vendor hereby covenants with the vendee that it is lawfully seized in fee simple of all of said described lands and of all the minerals therein; that all of said lands and said iron ore are free from any encumbrances except those mentioned in Article I hereof, and that it will warrant and defend the title of said lands and minerals and will protect the vendee in the peaceable and quiet possession of

said lands until the termination of this contract, as herein provided, against any and all lawful claims and demands of any person or corporation whatsoever, save and except only such claims as may arise under said easements for right of way, or may be created by the vendee, or arise by virtue of its acts or omissions.

Article IV.—Vendee's Agreement to Buy and Pay Purchase Price

1. Purchase by Vendee.—The vendee expressly agrees, subject to the provisions of Article XV hereof, to buy, and does hereby buy, [fol. 26] all of the iron ore upon said described lands; and, except as hereinafter provided with reference to the application of advance instalments of purchase price, the vendee further agrees to pay to the vendor therefor, whether the amount thereof be less or more than the aggregate quantity hereinbefore named as ascertained and estimated to exist thereon, as follows:

(a) For each gross ton of iron ore mined from said lands which shall be shipped therefrom by the vendee and which shall have an average mineral content, when dried at two hundred twelve (212) degrees Fahrenheit, of forty-nine (49) per centum or more of metallic iron, the sum of seventy-five cents ($.75).

(b) For each gross ton of iron ore mined from said lands and shipped therefrom by the vendee which shall have an average mineral content, when dried at two hundred twelve (212) degrees Fahrenheit, of less than forty-nine (49) per centum of metallic iron, the sum of fifty cents ($.50).

The determination of the analysis for the purpose of computing the purchase prices of said ores, shall be as provided in Article VIII hereof.

2. Times of Payments. Payments to the vendor for ore so mined and shipped from any portion of said lands shall be due and payable on the last days of January, April, July and October in each year, which days are herein referred to as "quarter days." The payment on each quarter day shall be for the full amount of iron ore mined and shipped from said lands during the three calendar months immediately preceding the first day of the month in which said payment shall become due. No receipt for any such payment or any statement signed by the vendor based upon or induced by any erroneous or fraudulent report, statement or certificate shall bar, defeat or prejudice the right of the vendor to receive or recover the full amount of the purchase price of the ore sold hereunder.

3. Minimum Annual Instalments. The vendee further agrees, as one of the conditions of this contract to be strictly observed and performed by it, that it will mine and ship from said lands, while this contract remains in force, quantities of iron ore, as follows: During the calendar years 1918 and 1919, such a quantity of iron ore as will yield to the vendor in each of said years as a minimum instalment on account of the purchase price of the said ores, at least the sum of

seventy-five thousand dollars ($75,000.00); and during the calendar year 1920 and during each and every calendar year thereafter while this contract shall remain in force (except as specified in Paragraph 4 of this Article), such a quantity of iron ore as will yield to the vendor in each calendar year as a minimum instalment on account of the purchase price of said ore, at least the sum of one hundred fifty thousand ($150,000.00) dollars.

It is mutually understood and agreed that one of the considerations and conditions of this contract, without which it would not be made by the vendor, is, that such respective instalments of purchase price of said ore shall be paid by the vendee during each calendar year while this contract remains in force (except as provided in Paragraph [fol. 27] 4 of this Article, and subject to the provisions of Article XVI hereof) whether iron ore of that value be mined and shipped by the vendee in any such year or not. Payments of said instalments of purchase price shall be made quarter-yearly on the quarter days aforesaid, each payment to be in a sum equal to one-fourth (1/4) of the annual instalment above specified for such year.

4. Minimum Instalments Last Ten Years. It is mutually understood and agreed that during the last ten years of the term of this contract the annual minimum payment of purchase price to be made to the vendor by the vendee shall be such sum, at the prices per ton specified in Article IV, Section 1, hereof, as shall pay for one-tenth (1-10) of all of the merchantable iron ore, and of all iron ore which may be rendered then merchantable by treatment, estimated to be in place or in stockpile on the said lands at the beginning of said ten year period, less any of the same then already paid for by vendee; it being the intent and agreement of the parties hereto that all of the iron ore of the character aforesaid now in, under or upon said lands shall be mined and shipped, or shall be paid for to the vendor, by the vendee, at or before the 31st day of December, 1967. In case of disagreement as to the estimate, the same shall be settled by arbitration as provided in Article XVIII hereof, the estimate to be determined from such data as are then available, relative to the property. Nothing herein shall require the vendee to pay for more ore during the last ten (10) years than the mine contains, and in case it develops at any time that the ore body is less than estimated and that the minimum instalments then paid equal or exceed the purchase price of all of said ore, no further minimum annual payments shall be required, and the excess, if any, already paid shall be repaid by the vendor to the vendee.

5. Annual Instalments—How Paid and Applied.—The respective annual instalments of purchase price hereinbefore specified to be made by the vendee shall be made either by way of payments for iron ore actually mined and shipped by the vendee from said lands in the year in which such payment shall become due, or by payments in advance of the mining and shipping of iron ore from said lands, or by both such forms of payment. But it is mutually understood and agreed that any and all ore paid for by the vendee in advance of mining and shipping thereof, may, at any time while this contract

remains in force, be mined and shipped from said lands by the vendee without further payment therefor; and all advance payments made as aforesaid may be applied by the vendee in payment for ore thereafter mined and shipped in any year in excess of the amount required to produce the prescribed annual minimum payment for such year. If the minimum instalments of purchase price above provided for be promptly made, the vendee will not be required to mine and ship ore hereunder if, in its judgment, it seems wise for any period to suspend mining operations from time to time, or year to year.

Article V.—Designation of Mine

For the purpose of avoiding confusion, and of enabling exact accounts to be kept by the parties hereto, it is mutually agreed that the [fol. 28] said lands and the mineral deposits thereon shall always be known and designated as the "Sargent Mine" and shall be referred to by said name in all notices, reports, communications and bookkeeping.

Article VI.—Exploration

1. Monthly Reports.—The vendee shall make monthly reports to the vendor of any explorations made by the vendee upon the described lands. All such reports shall show accurately, by map or plat, the location and elevation with reference to sea-level datum of all drill holes, and other exploratory work, and shall show on blueprints all holes below the surface, which holes shall be numbered and may be thereafter referred to by number. The vendee shall also report the progress of the work at each hole, the character of the formation encountered or passed through, and, if ore be found, samples thereof shall be taken at least every five feet in depth of all ore bodies, and analysis thereof shall be made at the expense of the vendee, and reported to the vendor, as aforesaid.

2. Division of Samples.—All drill and test-pit samples shall be divided and a sufficient portion thereof for accurate analysis shall be delivered to the vendor at such place or places as may be most convenient to the vendee.

3. Yearly Reports.—On or before the first day of April in each year, beginning with 1919, the vendee shall make and deliver to the vendor a written estimate of the amount of iron ore disclosed by the exploratory work carried on during the preceding calendar year, if any is done, in the mines or ore-deposits upon the described lands; such report shall also show the aggregate amount of all iron ore ascertained to exist and then in place in said mine or mines on the 31st day of December next preceding.

Article VII.—Vendee's Covenants as to Methods, etc.

The vendee covenants and agrees that all work and operations on the described lands shall at all times be conducted and carried on in such manner and by such means as shall be in accordance with the

best mining and engineering methods at the time employed on the Mesabi Range, and to that end specifically agrees to pursue and observe, among others, the following methods and regulations:

1. Disposition of Waste.—All earth, stones, and other debris and waste excavated or removed in the process of exploring, mining, or any other work, operation or improvement upon said lands, shall be deposited by the vendee at such convenient and accessible place or places on said lands as shall be agreed upon and designated from time to time by the parties hereto, in writing. In case, however, the parties shall be unable to agree upon such place or places, the vendee shall have the right to deposit such waste and debris at such place or places on any of said described lands as it may select and designate; [fol. 29] provided, it shall first demonstrate by proper exploration that no valuable body of iron ore exists upon the parcel or parcels of land so designated, the mining of which will be interfered with, or rendered more expensive, by such deposit.

2. Mining Methods and Conservation of Ore Deposits.—The vendee shall conduct all its work and operations on said lands in such manner that no unnecessary or unusual waste of ore or mineral shall be caused or permitted, and so that the future mining or removal of any iron ore in or upon said premises, whether the same be now merchantable or not, shall not be unnecessarily or unusually prevented or rendered unreasonably more difficult or more expensive. In the working of any mine or mines on said lands, the vendee will remove all merchantable iron ore encountered therein clean as it goes, in accordance with the best mining practice. If any portions of said lands, or of the mineral deposit therein, have not already been thoroughly explored, the vendee shall and will explore the same by test pits, drill-holes, drifts or raises in advance of mining thereon, in order to insure the proper laying out of mining plans and the adoption of the best methods of mining or removing the iron ore therein. Before mining operations shall be begun by the vendee plans therefor shall be prepared and shall be submitted to the vendor for approval and if and when so approved, the vendee shall conduct its operations in accordance therewith. But in case the vendor does not approve such plans and the parties shall be unable to agree as to the plans or methods so to be adopted and applied, or subsequent modifications thereof, the same shall be determined by arbitration as provided in Article XVIII hereof.

3. Stockpiling.—In order to permit the convenient operation of said lands hereunder by the vendee, and to conserve the ore which may be mined therefrom, but not shipped, the vendee is hereby authorized and empowered to place the same in stockpiles upon said lands; but it is mutually agreed that ore so stockpiled shall be classified as follows: (a) Ore having an average mineral content of forty-nine (49) per centum or more of metallic iron; (b) Ore having an average mineral content or less than forty-nine (49) per centum of metallic iron, but which, by proper treatment or concentration is capable of being rendered merchantable; and (c) Ore having an

average mineral content of less than forty-nine (49) per centum of metallic iron and more than such per centum of metallic iron as may be agreed upon by the parties hereto, from time to time, or, in case of their failure so to agree, as may be fixed by arbitration in the manner provided in Article XVIII hereof and which ore is not then susceptible of being rendered merchantable by any recognized method of concentration or other treatment; but any minimum per centum so determined in respect of stockpiling ores shall not be considered as determining what ores may be wasted or caved in the course of mining operations hereunder. All said classifications to be made of ore when dried at 212 degrees Fahrenheit. Ore mined from said lands belonging to any one of said classes shall be stockpiled separately from ore belonging to either of the other classes. It shall be optional with the vendee whether ore belonging to any of said classes shall be stockpiled at any time; but all ore mined from [fol. 30] said lands belonging to said class "C" which the vendee shall not desire to ship shall be stockpiled by the vendee upon said lands in such manner and location that it may be shipped therefrom at any time thereafter, if and when it shall become merchantable, or may be made merchantable by concentration or other treatment, or may be advantageously used for mixing with other ores. The vendee shall have the right at any time during the life of this contract to ship any class of ore so stockpiled, and all ore so shipped shall be paid for by the vendee at the prices specified in Paragraph 1 of Article IV of this contract, at the time and in the manner in said Article provided. If, during the continuance of this contract in force, the vendee shall not ship said ore, so much thereof as shall remain in stockpile on said lands shall revert to and become the property of the vender, unless all of the ore mined from or contained in said lands shall have been fully paid for as contemplated by the parties and recited in Paragraph 4 of said Article IV excepting such as becomes the absolute property of the vendee under Paragraph 3 of Article XVI hereof.

4. Adverse Liens.—The vendee will protect the lands, and every part thereof, and all buildings and improvements thereon, and all iron ore mined therefrom wherever situated (until the same shall be fully paid for), from all mechanics,' laborers' and material-men's liens, and will keep the title to all of the same free and clear from any cloud or encumbrances arising in any manner whatsoever on account of its mining operations on said lands, the concentration of said ore, or on account of the use and occupation of said lands by the vendee, its agents, servants, employees, or contractors.

5. Encumbrances.—The vendee will not execute any mortgage, trust deed, lien or encumbrance of any kind or any interest in said lands acquired by it under the provisions of this contract, or upon any machinery, fixtures or personal property thereon, or upon any ore mined or removed from said lands (except such ore as shall have become the absolute property of the vendee under the provisions of this contract), which shall not, by its terms, be ex-

pressly subject to the rights of the vendor hereunder, and to its paramount right to enforce any or all of the agreements, covenants and conditions hereof obligatory upon the vendee.

6. Mine Maps and Plats.—The vendee will prepare and deliver to the vendor, as soon as may be after the first day of January of each year, complete, accurate and detailed mine maps or plats or blueprints showing, as accurately as possible, the nature and extent of all surveys and operations of the vendee upon the lands and in each mine or ore deposit thereon, up to the last day of the preceding year.

7. Assignment and Subletting.—The vendee will not, either directly or indirectly, by operations of law or otherwise, assign this contract, or any right or interest herein, or sublet the lands, or any part thereof, without the written consent of the vendor, except that this paragraph shall not prevent the assignment of this contract without such consent to a responsible company formed or to be formed on any reorganization of the vendee or its affairs, voluntarily or under direction of Court.

[fol. 31] ' Article VIII.—Sampling and Analysis

All ore mined from the lands described in Article I hereof, shall, before being mined, whether by open-pit or under-ground operations, be sampled in place, the samples to be taken from drill-holes, test-pits, drifts, or raises, and analyzed for the purpose of ascertaining the iron, phosporous, silica, alumina and manganese content thereof.

All ore or ore-formation mined from said lands (whether shipped as merchantable ore direct, or as crude ore to concentrating plant, on or off the premises, or placed in stockpile) shall be carefully sampled by the vendee in such manner as to show the true average character thereof; such samples shall as soon as practicable thereafter, be assembled for analysis, in quantities representing approximately two hundred (200) tons in the aggregate and shall be dried at 212 degrees Fahrenheit, and thereafter analyzed by competent and experienced chemists, and the actual percentage of metallic iron, phosphorous, silica, alumina and manganese contained therein determined; and copies of all such analyses shall be given to the vendor forthwith. The analysis for computing the purchase price shall be made in the manner above provided, from samples taken at time of shipment direct, or of transmission to concentrating plant, on or off the premises; but when analyses are made of less than 200 tons, they shall govern.

The vendee shall have special samples taken for the purpose of ascertaining the true moisture content of all ores mined from said lands as often as may be necessary, and such moisture samples shall be taken in accordance with the best approved methods and the determination made by practical, competent and experienced chemists so as to determine the actual percentage of moisture contained in the ore.

On request of the vendor the vendee shall divide the pulp of such samples as the vendor shall wish to have analyzed, for the purpose of checking results or to be kept as a record.

The vendee shall and will furnish the vendor each day, or as soon thereafter as practicable, with a certificate, signed by the person or firm making the analyses of the said samples of ore, showing the result of each analysis made of the preceding day's samples of iron ore, including the numbers and dates of samples; and the vendee shall also furnish to the vendor, on or before the 20th day of each calendar month, statements showing separately the quantity of ore, actual and estimated, and the general average of all analyses made during the preceding calendar month, of all such ore shipped from said lands, and of all ore of each class placed in stockpile. The vendee shall also furnish upon application of the representative of the vendor, the numbers of the samples and cars included in samples in such manner as may serve to identify check samples of corresponding cars to be taken by the vendor.

Article IX.—Shipping and Weighing Ore

1. Shipping Statements.—The vendee shall and will keep an accurate record of each and every car of ore loaded for shipment from the said lands, and shall furnish the vendor with daily statements showing the car number and initials of each and every car, [fol. 32] together with the mine shipping bill number, and whatever information shall be necessary to complete the shipping record of each car.

2. Weighing Ores.—The vendee shall and will cause all iron ore mined upon the said lands and shipped by the vendee to be weighed by the Railway Company transporting the same, if it be transported by a public carrier, and if transported over any other tracks, or otherwise transmitted to concentrating plant, the vendee will cause said ore to be weighed upon scales complying with the regulations of the Railroad and Warehouse Commission of the State of Minnesota to be installed and maintained by the vendee upon said lands, or lands adjacent to concentration plant. The vendee shall furnish the vendor, as soon as possible after the ore is weighed, with accurate tissue copies of the railroad waybills in all cases where said ore shall be transported by a public carrier, and in cases where the same is transported over other tracks or is otherwise transmitted to concentrating plant, with the written certificate of the weigher in charge of said scales installed by the vendee as aforesaid. All such waybills and certificates shall contain the car number and the weight in pounds of the contents of each car of ore; and as early as possible in each month, the vendee shall furnish the vendor with a certificate of said railway company, or of said weigher, showing the total weights of all such ores transported and weighed, or otherwise transmitted during the preceding calendar month; and it is mutually agreed that any certificate or statement in writing signed by such weigher stating the weights of any ore weighed by him, and any certificate or state-

ment in writing signed by any officer or agent of the railway company so transporting any such ore that said company has received for transportation any iron ores from said lands at any time or times, and stating the weights thereof, and that any copies or transcripts from the books of any railway company relating to the transportation or weights of such ores as aforesaid, and signed by any such officer or agent, shall be prima facie evidence of the facts so stated or appearing, in any suit at law or in equity, or in any controversy between the parties hereto, or their successors in interest, or in or before any court of reference or arbitration.

The right is hereby conceded, however, to either party to inspect, review and test the correctness of any scales or weights used in weighing said ore, and any reports of any such weigher or railway company, at such time, and in such manner, as either may choose to adopt; it being mutually understood and agreed that any errors shown to exist shall, when ascertained, be cognizable and corrected, and any difference caused thereby shall be adjusted and paid for upon the next regular quarter-day.

The vendor shall have the right at all times to provide a competent person to weigh upon the scales installed by the vendee any of said ore transported over other tracks than those of a public carrier, or otherwise transmitted to concentrating plant, and, in such case, it is agreed that the salary of such weigher and all other expenses connected therewith (but not including the cost of purchasing and installing the scales) shall be borne equally by the parties hereto.

[fol. 33] Article X.—Reports of Mining Operations

On or before the 20th day of each calendar month, during the continuance of this contract in force, the vendee shall and will render to the vendor a statement in writing showing the amount of iron ore mined from each mine or ore-deposit upon said lands during the preceding month, or since the last preceding statement (if any iron ore shall have been mined on said lands during such time), and the amount of each class thereof placed in stockpile; such statements shall contain such information as the vendee shall have kept or acquired as to the ore mined on said lands, and shall be made up of the mine tally and other records of ore taken from each mine or ore-deposit, and shall contain all other information which the vendee may have as to the amount of ore taken from the respective mines or ore deposits upon said lands for shipment or for stockpiling, as fully as the vendee shall have or obtain such information for its own use and benefit.

Article XI.—Minerals Other Than Iron

It is mutually agreed that, in case any ores or minerals other than iron ores and manganese ores, or any mixtures or combinations of ores or minerals which shall have a greater market value than for the iron ore and manganese therein contained, shall be discovered upon the said lands, the vendee may mine and remove the same; and

for all such other ores, minerals, mixtures or combinations mined and shipped from the said lands by the vendee, the vendee shall pay to the vendor as purchase price thereof thirty (30) per cent of the market value or bona fide selling price thereof at the market or markets therefor, after all transportation charges have been deducted from such market or selling price. Such purchase price shall be due and payable at the same time and in the same manner as advance payments of purchase price upon iron ore shipped under the terms of this contract; and reports of the kind, quality and quantity of such other ores, minerals, mixtures or combinations, and of the market or selling price thereof at the place of market, and of all transportation charges thereon, shall be made at the same time and in the same manner provided in this contract for reports upon iron ores.

In case the vendee shall elect to mine any such ore but shall not elect to ship said ore or mixture or combination, it shall place the same in stockpile on the said lands upon which the same shall be found in a place and manner convenient for shipment, and the same shall, if the vendee so elects, upon payment therefor as above provided, become and be the property of the vendee, and the vendee shall have the right to keep the same in said stockpile without charge or interference on the part of the vendor, and, while this contract remains in force, to remove the same, or empower any purchaser thereof or any other person to enter upon said lands and remove the same.

Article XII.—Taxes

Prior to the time when any penalty or increase shall attach thereto, the vendee shall pay all taxes and assessments, ordinary and extra- [fol. 34] ordinary, general and specific, which may be levied or assessed upon the said lands, and the whole thereof, and upon the iron ore mined thereon, and upon all improvements, erections and personal property thereon from and after the date hereof, and, in addition thereto one-third of all taxes and assessments levied for the year 1917 upon said lands; and the vendee shall pay all taxes and assessments levied as aforesaid for each year thereafter while this contract shall remain in force, except that it shall only be required to pay that proportion of the taxes levied for the tax-year in which this contract is terminated equivalent to the part of said year during which this contract is in force. The intent hereof being that the vendee shall pay altogether taxes for a period equivalent to the time that this contract is in force. And the vendee shall furnish the vendor, from time to time as taxes may be paid, with duplicate tax receipts showing the payment of all such assessments or taxes, provided, however, that the vendee shall always have the right to contest, in the courts or otherwise, the validity of any such taxes or assessments, in case it shall deem the same to be unlawful, unjust, unequal, or excessive, or to take such other steps or proceedings as it may deem necessary to secure the cancellation, reduction, readjustment or equalization thereof, before it shall be required to pay and

discharge the same, or any part thereof; provided, further, that the vendee shall not permit or suffer said lands, or any part thereof, or any of the structures, improvements, or personal property thereon, to be sold at any time for any tax or assessment.

The vendor shall indemnify and save harmless the vendee against loss or expense on account of any levy or assessment of any taxes for any year or years prior to the execution of this contract, the intention being to protect the vendee against any assessment for back taxes on account of any lands which may have escaped assessment or have been inadequately assessed in prior years.

Article XIII.—Rights of the Vendor

1. Title to Ore and Vendor's Lien.—It is mutually agreed that the title to the iron ore hereby sold to the vendee shall be and remain in the vendor, as security for the performance of this contract by the vendee, until the purchase price of such ore as shall be mined and shipped from said lands or mined, treated and shipped, and taxes and all other payments accruing and due hereunder, shall have been fully paid, and the vendor shall at all times have, possess and hold a lien upon all iron ore mined from said lands and shipped therefrom but not sold to a bona fide purchaser until the purchase price therefor shall have been paid, and upon all machinery, personal property and improvements placed upon said lands by the vendee, as security for any unpaid balance of money due hereunder, and as security for the performance by the vendee of each and all of the covenants and conditions hereof obligatory upon it; which liens may be enforced against any such property in like manner as liens conferred by chattel mortgages, or by any other lien security, are, or may be, entitled to be enforced under the laws of any state where such ore or other property may be situated; provided, however, that [fol. 35] the title above reserved and the lien herein provided for shall not prevent or affect the sale of ore from said premises in the ordinary course of business, or attach to and follow any ore sold by the vendee in good faith and shipped from the premises to a bona fide purchaser thereof.

2. Insolvency of Vendee.—If the vendee shall become insolvent at any time during the continuance of this contract, the vendor shall have the continuing right to demand payment of the purchase price of all ore mined on the described lands before its removal therefrom by the vendee, as well as all current payments for instalments of purchase price then due and payable under the terms of this contract, and payments of all taxes for the current year and of all other sums which shall or may be due or payable under the terms of this contract (or, in lieu of such payments, that the same shall be secured to the satisfaction of the vendor), in advance of, and as a condition of, any further shipment by the vendee of ore from said premises, or the removal by the vendee of ore from said lands, or the removal by the vendee of any structures or fixtures, or any machinery or other personal property upon said lands.

3. Suspension of Right to Remove Ore.—Whenever any payment of instalments of purchase price or taxes shall become due and remain unpaid after the time or times in this contract provided, the vendor may, at the end of ten (10) days, after written notice given by the vendor specifying the default, suspend the right of the vendee to remove from said lands any ore, until such minimum instalments of purchase price, or such taxes, are paid; and thereafter all further removal of ore from said lands shall cease on the part of the vendee until the default complained of shall be remedied.

4. Termination by Vendor.—This contract is made by the vendor and accepted by the vendee, upon condition that, if the purchase price of the iron ore herein referred to, including the advance payments therefor herein agreed to be made by the vendee, or any part of either thereof, be and remain unpaid after the days and times specified therefor, or if the vendee shall fail to keep any of the other covenants, agreements or conditions herein expressed to be kept, performed or observed by the vendee, and if any such failure shall continue for thirty (30) days after the vendor shall have given notice in writing to the vendee specifying any such default, neglect or failure, then and thenceforward, and in either of said events, it shall be lawful for the vendor, with or without process of law or judgment, to enter upon and take possession of said lands or any part thereof, in the name of the whole, together with all ores, machinery, fixtures, improvements and personal property thereon, and to possess and hold the same, and to exclude, forcibly if necessary, and without being guilty of trespass or other wrongful act, the vendee and all persons claiming under the vendee, and, at the election of the vendor, to declare this contract cancelled and determined and all right, title and interest acquired hereunder by said vendee to be revested in the vendor, by giving to said vendee thirty (30) days' notice in writing of the intention of said vendor to cancel and determine this contract and to annul all right, title and interest acquired hereunder by said [fol. 36] vendee, it being mutually understood and agreed that notice of thirty (30) days is a reasonable and sufficient notice so to be given to said vendee in case of its failure to perform any of its said covenants herein, and shall be sufficient to cancel all obligations herein on the part of said vendor and fully to revest it with all right, title and interest hereunder then remaining in the vendee; and all payments made by the vendee on this contract, and all its right, title and interest in all ore not then paid for, and the buildings or improvements of every kind upon said lands shall thereupon vest in the vendor, and such payments, ore, buildings and improvements may be retained by said vendor in liquidation of the damages sustained by it on account of such default. Said vendor, in lieu of the notice of cancellation hereinbefore prescribed, may, at its option, terminate this contract, after the thirty days' written notice of default hereinabove prescribed, in any manner then provided for by the laws of the State of Minnesota. Any such re-entry on the part of the vendor shall be without prejudice to any other remedy or proceeding which the vendor may have in law, equity or otherwise by reason of any

breach of any covenants, promise or agreement of the vendee herein contained, or for the recovery of possession of said premises.

In case the vendor shall give notice of termination of this contract, as hereinabove provided, upon the ground that the vendee has failed to keep, observe or perform any of the conditions imposed upon it hereunder respecting the method of mining or grading of ores, or the conduct of any of its operations upon said lands, and such default shall be denied by the vendee, the vendee shall have the right to demand arbitration in respect to such alleged default in the manner provided by Article XVIII hereof, and the time consumed in such arbitration shall not be counted as a part of the thirty (30) days hereinbefore provided for, but, in event the decision of the arbitrators shall be in favor of the contentions of the vendor so made, then the vendee shall have the period of thirty (30) days from the filing of their decision by the arbitrators within which to cure such default. And, in case or to the extent that the same cannot be cured by performance on the part of the vendee, any damages sustained by the vendor, from the time of notice of such default claimed by the vendor, shall be assessed by said arbitrators and the damages so awarded shall be paid by the vendee forthwith.

5. Retention of Advance Payments of Purchase Price.—Except as provided in Article IV, Section 4, above, the vendor shall not, in any event, be liable or required to repay to the vendee any sum which has been paid by the vendee as advance payments of purchase price for ore. All such payments shall belong absolutely to the vendor as part of the consideration for the execution by it of this contract and of the privilege hereby given to the vendee of terminating the same.

6. Vendor's Right of Inspection and Additional Exploration.—The vendor shall have the right by its officers, agents and attorneys at any and all times to enter upon said lands and every part thereof, and into any mine or ore deposit thereon, and in and upon any lands to which any ore from the premises herein described may have been [fol. 37] removed, for the purposes of inspecting or surveying the lands or any part thereof, of sampling any ore therein or that may be removed therefrom, of measuring the quantity of ore which shall have been mined thereon or therefrom, and of ascertaining the quantity of ore which has been shipped therefrom by the vendee, provided that the work and operations of the vendee shall not be unnecessarily or unreasonably hindered or interrupted thereby. Whenever the vendor shall be of the opinion that ore not already disclosed may exist on said lands on or above any level or levels on which the vendee shall then be operating the vendor shall have the right to notify the vendee in writing to explore the lands, or any part thereof, by test-pitting, drilling, drifting, or sinking or raising through the ore formation, specifying in such notice the place where such work shall be done and the particular method required. Within ten (10) days after the receipt of such notice, the vendee shall proceed to comply with the requirements of such notice and, if an ore body of sufficient size and value to warrant the expenditure so involved shall be disclosed as the

result of the work so prosecuted, then the expense of such work shall be borne by the vendee, otherwise the same shall be borne by the vendor and shall be paid forthwith upon demand of the vendee. Should the vendee fail upon such notice to proceed with such work, then the vendor may, if it sees fit, enter upon the land and itself prosecute such explorations, subject to the provisions hereinabove set forth as to payment therefor. But such exploration shall not be required hereunder by the vendor, prior to the first day of January, 1953, except for the purpose of insuring the discovery and mining of such ore as may be merchantable, or may be rendered merchantable by treatment as herein provided, contiguous to, and susceptible of being profitably mined and removed by the vendee through, the workings in which the vendee is then operating; nevertheless, for the purpose of deriving information upon which to base accurate estimates of the quantities of ore in place on said lands, in order to fix the annual minimum payments of purchase price to be made during the last ten years of the term of this contract (as provided in Paragraph 4 of Article IV hereof), the vendor may require explorations as herein specified at any time after January 1, 1953.

Nothing herein contained shall be construed to require the vendee to do any further exploration work at any time after it may have given notice of its intention to terminate this contract as herein permitted.

Article XIV.—Structures and Fixtures

It is hereby further covenanted and agreed by and between the parties hereto that all shaft houses, shaft timbers or supports placed at or in any mine upon the lands, or any timber, steel or concrete framework necessary to the use and maintenance thereof, or of shafts or drifts therein, or of approaches thereto, or any tramway within any mine constructed or placed upon the lands during the term of this contract, shall become and be a part of and belong to the land upon which the same may be, and neither the vendee, nor any person claiming under it, shall, during the continuance of this contract (un-[fol. 38] less all of the ore of the character and quality required to be removed by the terms of this contract has been removed from the mine or mines at which such structures have been erected or improvements made), destroy, take down, remove or injure the same, except for the purpose of replacing the same with other similar property of equal or greater value and of greater or equal efficiency; provided, however, that nothing in this Article contained shall prevent or prohibit the vendee from removing at any time any shaft houses, or tracks or tramways in any mine, upon said land, when the same shall no longer be necessary or needed in or for the future operations of such mine, or to make such changes in the supports or timber or framework in any such mine, or the approaches thereto, or the tramways within the same, as shall be necessary in carrying on the mining operations at any such mine, or by reason of a change in the method of operating any such mine.

Article XV.—Termination by Vendee

Upon the consideration and condition that all of the covenants, agreements and conditions herein expressed, obligatory upon it, shall have been, to that time, fully kept, observed and performed by the vendee, and all paym-nts of purchase price of that portion of the ore hereby sold which shall have been mined and shipped by the vendee shall have been fully paid and discharged, together with all taxes and other sums then due and payable under the terms hereof, it is mutually agreed that the vendee shall have the right at any time prior to January 1, 1958, upon six months' notice in writing given by it to the vendor, to terminate this contract, and this contract shall terminate six months after the receipt of such notice by the vendor.

And it is mutually agreed that in case his contract be not terminated, as provided in this Article, before January 1st, 1958, the same shall continue in force until all of the merchantable iron ore on the premises herein described and all the ore therein that may be made merchantable, as contemplated by Paragraph 4 of Article IV hereof, shall be mined or shall be paid for by the vendee on or before the 31st day of December, 1967, in the manner specified in Paragraph 4 of Article IV hereof. And in case all of said ore shall be so paid for before the same shall be mined from said lands or shipped therefrom, it is further mutually agreed that the term of this contract shall thereafter, at the election of the vendee, be extended for such period as the vendee may desire in order to permit the mining or shipment of all such ore in or upon said lands which has been fully paid for by the vendee or which it may elect to pay for under the provisions of Paragraph 3 of Article XVI hereof; provided, that during any such period of extension the vendee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the said lands in the same manner as if the term of this contract as originally fixed had not expired.

Article XVI.—In Case of Termination of Contract

In case of the termination of this contract, in accordance with the provisions hereof:

[fol. 39] 1. Peaceable Surrender by Vendee.—The vendee shall and will peaceably surrender the lands to the vendor, with all stopes, supports, shafts, and other improvements that may have been made thereon, all in good order and condition, and all ore thereon or therein in stockpile or otherwise, except as specified in Paragraph 3 of this Article.

2. Removal of Machinery, etc., by Vendee.—The vendee shall have ninety (90) days after such termination in which to remove all engines, tools, machinery, railway tracks, structures of every kind and all other property of every nature and description erected or placed by the vendee upon the lands; provided, that all taxes and all advance payments of purchase price and other moneys due to the vendor hereunder, shall have been paid, and all other conditions, cov-

enants and agreements obligatory upon it, shall have been fully performed, by the vendee; but the vendee shall not be deemed authorized by this Article to remove or impair, and shall not remove or impair any supports placed in any mine upon said premises, or any timber, steel or concrete framework necessary to the use or maintenance thereof, or if any shaft houses, shafts or drifts therein, or of approaches thereto, or any tramway within any mine; and, on failure of the vendee to remove any property, hereby authorized to be removed, within said ninety (90) days, all of the same remaining upon said lands shall belong to and become the property of the vendor.

3. Payment for Ores Mined.—When this contract shall expire or be terminated, any iron ore mined from said lands then situated thereon, or upon any other lands, of which the purchase price shall not have been paid in full, may be paid for by the vendee at the prices hereinbefore provided, and it shall thereupon become the absolute owner thereof; and any ore upon the lands herein described, or upon any other lands, which shall have been mined and paid for by the vendee, by the application of advanced instalments of purchase price, or otherwise, shall be its absolute property, and the vendee shall have the right to designate and select the ore to which such payment shall be applied; and in either event the same may be removed by the vendee, within a reasonable time thereafter, without objection or interference by the vendor, except as provided in Paragraphs 1 and 3 of Article XIII hereof.

4. Final Payments Hereunder by Vendee.—All sums of money, including taxes, which shall be or become due and payable under this contract up to the time of the termination of the rights of the vendee hereunder, must be, and will be, paid by the vendee, upon settlement and adjustment of the amount thereof, within thirty (30) days after such termination. And any ores then in stockpile which the vendee may elect to buy under the provisions of the preceding paragraph of this contract, shall be paid for within said period of thirty (30) days upon the basis of the analyses and weights thereof as ascertained and reported at the time of placing the same in stockpile; but when all of the same shall have been shipped from said premises by the vendee, an adjustment of the purchase price thereof [fol. 40] shall be made forthwith upon the basis of actual weights and analyses ascertained, as herein provided, at the respective times of shipment thereof, and such further payments by the vendee, or refundments by the vendor, shall be made as will cause the purchase price to conform to such final analyses and weights.

5. Discharge of Contracts.—The vendee must and will forthwith execute and record in the office of the Registrar of Titles of Itasca County, Minnesota, whenever the described lands shall be surrendered under the terms hereof, a formal relinquishment and discharge of this contract, and a release from the terms hereof of all of said lands, and in and by such instrument the vendee must and will expressly re-convey and surrender to the vendor all of its right, in-

terest and property in and to any and all of the iron ore hereby sold to the vendee, which shall not have been mined and shipped therefrom or paid for pursuant to the provisions of Paragraph 3 of this Article, at the date of such surrender or termination.

Article XVII.—Notices, Reports, etc.

All notices, statements, reports or other communications, authorized or required by any provision of this contract, may be made or given by either party to the other, by depositing the same in the United States mail, postage prepaid, and duly registered, addressed, if to the vendee at its principal office in the city of ——, and, if to the vendor, at its office in Minneapolis, Minnesota. Any such deposit shall be deemed good service or delivery of any such notice, statement, report, or other communication, upon the expiration of twenty-four (24) hours after the time of registration thereof at a United States post office. Any payments to be made pursuant to this contract to the vendor shall be made to it at its place of business.

Article XVIII.—Arbitration

It is mutually covenanted and agreed that in case any difference or controversy shall arise between the parties hereto respecting the due observance by the vendee of the provisions of this contract obligatory upon it relating to the mode of opening, developing or working any mine or mines upon the described lands; or respecting the mining plans to be adopted; or respecting other matters hereinbefore specified to be arbitrated or which the parties may hereafter agree to arbitrate, shall be submitted to arbitration, to be initiated and conducted as follows:

Either party may require arbitration by serving upon the other a demand therefor, in writing, specifying the matter to be submitted to arbitration and nominating some competent, unbiased and wholly disinterested person to act as arbitrator; within ten (10) days after receipt of such written demand and nomination, the other party shall, in writing, nominate a competent, unbiased and wholly disinterested arbitrator, and the two arbitrators so designated shall select a third and give immediate written notice of such selection to both parties, and shall fix in said notice a time and place for the first meeting of the arbitrators not later than ten (10) days thereafter, at which time and place both parties may apppear and be heard.

[fol. 41] In case either party shall fail to make a selection upon notice as aforesaid from the other party, or in case the arbitrators so selected by the parties fail to agree upon a third arbitrator, within ten (10) days, then such arbitrator or arbitrators may upon application made by either party, after ten (10) days' written notice thereof to the other party, be appointed by any judge of any State or Federal Court of record having jurisdiction within the State or Federal judicial district in which the question or matter in dispute shall arise.

Said arbitrators shall meet at the place appointed as aforesaid after having given each of the parties not less than ten (10) days' written notice of the time and place of such meeting, and,, after hearing the parties in regard to the matter in dispute, and taking such other testimony and making such other examinations and investigations as justice shall require and as such arbitrators may deem necessary, hear and decide the questions submitted to them.

They shall make in writing their award or decision upon the question or questions, or matter or matters, in dispute submitted to them, and shall serve a copy thereof upon each party hereto; and the award or decision of such arbitrators or a majority of them shall be final and binding upon the parties hereto, and shall have the legal effect of an award or decision judicially made or determined upon regular proceedings had in a court of competent jurisdiction: and each and every party hereto shall immediately conform to, and in all respects render prompt and full compliance with, every such award or decision.

The expense of such arbitration shall be divided between the parties hereto share and share alike, unless otherwise specified in the award.

In all cases where the nature of the question to be arbitrated shall require the expert knowledge of mining engineers or other experts in any branch of the business, such persons shall be appointed as arbitrators; and, if the parties cannot agree upon the competency of the arbitrators selected, the same shall be appointed by a judge as aforesaid; but any objection to the competency of an arbitrator shall be made in writing before any hearing in the arbitration is entered upon.

Any difference or controversy, subject to arbitration under the terms of this contract, that may arise between the parties as to the construction and carrying out of this contract, or the rights of the parties hereunder, or the transaction of business under the provisions hereof, shall not interrupt the performance of the contract or the continuance of business hereunder; but such business shall continue to be transacted, and settlements and payments shall be made hereunder, in the same manner in which the same had been transacted and made prior to the arising of such difference or controversy, until the matters of difference shall be finally determined by the arbitrators as hereinbefore provided, and thereupon such payments or restitution shall be made as may be required by the decision of the arbitrators.

It is expressly agreed, however, that, if such controversy or difference shall arise by reason of the claim by the vendor that any method of mining or other operation employed by the vendee is wasteful and contrary to the provisions of this contract relating to mining methods, then, and in such case, the arbitrators shall assess [fol. 42] the damages, if any, accruing to the vendor by reason of the employment of the method complained of, from the time of the service of written complaints of such method by the vendor upon the vendee, and the damages so awarded shall be paid forthwith by the vendee.

Article XIX.—Definitions

1. "Shipments."—The word "shipments" or "shipped," as used in this contract, shall be construed to refer to the removal by the vendee of any ore from the said lands for transportation to dock or place of consumption, or for the purpose of concentrating and treating the same.

2. "Tons."—The word "ton" wherever used herein is understood to mean the long ton of two thousand and two hundred and forty (2,240) pounds avoirdupois.

3. "Merchantable Ore."—The term "merchantable ore," as herein used shall be construed as meaning the ore in the said lands which, taken in connection with all the other ore therein available for mixing therewith in the ordinary course of mining operations, will make an average product which will meet the market requirements and which can be sold on the market at a reasonable profit to the vendee at the time when the question of marketability arises, after payment of the purchase price thereof as herein specified; but this clause shall not require the mixing of Bessemer with non-Bessemer ore so as to affect its character or saleability as Bessemer ore.

Article XX.—Binding Effect of This Contract

All of the agreements, covenants, conditions and provisions of this contract shall run with the land, and shall inure to the benefit of, and be obligatory upon, the grantees, successors and assigns of the vendor and vendee, respectively, as well as upon said parties themselves.

In witness whereof the vendor and vendee have caused this instrument to be executed in quadruplicate, the day and year first above written.

[fol. 43] Exhibit No. 3 to Bill of Complaint

Chapter 226 Laws 1923

An Act Providing for the Levy and Collection of a Tax on Royalty Received by the Owner of Any Right, Title or Interest in Land Stituate in This State for Permission to Explore, Mine, Take out, and Remove Ore from the Same.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. There shall be levied and collected upon all royalty received during the year ending December 31st, 1923, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this state, a tax of six (6) per cent.

Sec. 2. For all purposes of this act the word "royalty" shall be construed to mean the amount in money or value of property received by any person having any right, title or interest in or to any tract of land in this state for permission to explore, mine, take out and remove ore therefrom; and the word "person" shall be construed to include individuals, corpartnerships, associations, companies and corporations.

Sec. 3. Every person to whom royalty is paid shall on or before the first day of February, 1924, and annually thereafter on or before the first day of February of each year, make and file with the Minnesota Tax Commission a report verified by the person making the same and setting forth the amount of royalty received by such person during the preceding calendar year, and such other information as said commission may require.

Sec. 4. It shall be the duty of every person paying royalty, on or before the first day of February, 1924, and annually thereafter on the first day of February in each year, to make and file with the Minnesota Tax Commission, a report covering the preceding calendar year, verified by the oath of the person making the same and setting forth:

1. The number of tons mined from each tract of land for the right to mine and remove ore on which such person pays royalty

2. The amount of royalty paid on each tract of land separately.

3. The name and postoffice address of each person to whom royalty is paid, and

4. Such other information as said commission may require.

Sec. 5. Upon the receipt by the Minnesota Tax Commission of the report provided for in Sec. 3 of this Act, it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, and shall enter the amount thereof in its records and shall make its [fol. 44] certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

A person subletting land for the use of which he received royalty shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received.

Sec. 6. If any person subject to the tax provided by this act shall fail to make the report provided for in Section 3 of this act at the time and in the manner therein provided, there shall accrue upon

the tax herein imposed a penalty in an amount equal to ten per cent (10 per cent) of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the ores mined or produced, together with the royalty paid thereon and shall fix the tax due thereon from such person, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such royalty. Such findings shall stand in the place of the report required by this act to be made by such person and shall be in all courts of the state, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. Such tax shall be due and payable on the first day of June, 1924, and annually thereafter on the first day of June, and if not paid on or before that date a penalty of ten (10) per cent shall immediately accrue thereon.

Sec. 8. The situs of royalty for all purposes of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the same is due and payable upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid.

Sec. 9. On or before the tenth day of June in each year the state auditor shall make his draft upon each person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 10. The state treasurer within ten days days after the receipt of the draft mentioned in Section 9 of this act shall notify by mail the taxpayer designated therein of the amount thereof and if not paid within thirty days after presentation shall deliver the same to [fol. 45] the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey County for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due; and the judgment of the court, when so obtained and properly docketed, shall be a lien upon all right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one per cent per month and the said property may be sold in satisfaction of such judgment in the same manner as provided by law for the sale of property upon execution.

Sec. 11 Any person who for the purpose of evading the payment of the tax herein provided or any part thereof makes any false return or report shall in addition to the tax provided by this act pay a penalty of fifty (50) per cent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act shall be guilty of perjury and upon conviction thereof shall be punished therefor as provided by law.

Sec. 12. All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person paying or receiving royalty on ore mined in this state, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any such person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. All taxes assessed, levied and collected under the provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 11th, 1923.

[fol. 46] EXHIBIT NO. 4 TO BILL OF COMPLAINT

General Statutes of Minnesota, 1913, Relating to Taxation

Sec. 1972. Real Property Defined.—Real property, for the purposes of taxation, shall be construed to include the land itself, and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same.

Sec. 1973. Mineral, Gas, Coal, Oil, etc.—That whenever any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil or other similar interests may be assessed and taxed separately from such surface rights and interests in said real estate and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes.

Sec. 1974. Personal Property Defined.—Personal property, for the purposes of taxation shall be construed to include:

1. All goods, chattels, moneys and effects.
6. Credits of every kind.

9. All personal estate of moneyed corporations, whether the owners thereof reside in or out of the State.

Sec. 1988 as amended by Chap. 140 Laws 1923. Classification of Property.—All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

Class 1. Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined, it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Class 2. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall [fol. 47] be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

Class 3. Live stock, poultry, all agricultural products, except as provided by class three "a" (3a), stocks of merchandise of all sorts together with furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implements and machinery whether fixtures or otherwise, except as provided by class three "a" (3a) and all unplatted real estate, except as provided by class one (1) hereof, shall constitute class three (3) and shall be valued and assessed at thirty-three and one third (33⅓) per cent of the true and full value thereof.

Class 3a. All agricultural products in the hands of the producer and not held for sale, and all agricultural tools, implements and machinery used by the owner in any agricultural pursuit shall constitute class three "a" (3a) and shall be valued and assessed at ten (10) per cent of the full and true value thereof.

Class 4. All property not included in the preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof.

Sec. 1975. Other Definitions.—Subd. 5—"True and full value" shall mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained therefor at private sale, and not a forced or auction sale.

Sec. 2316 as amended by Chap. 102 Laws 1923. Moneys and Credits.—As used in this section the word "money" means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word "credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state.

As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three (3) mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, nor to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309, General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks; provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

[fol. 48] Minnesota State Constitution, Article 9, Section 1.—Power of Taxation: Taxes shall be uniform upon the same class of subjects. * * *

Article 1, Section 7. Due Process of Law.—No person shall * * * be deprived of life, liberty or property without due process of law.

Article 1, Section 13. Private Property for Public Use.—Private property shall not be taken, destroyed or damaged for public use, without just compensation therefor first paid or secured.

Article 4, Section 33. Special Legislation Prohibited.—In all cases when a general law can be made applicable no special law shall be enacted and whether a general law could have been made applicable in any case is hereby declared a judicial question and as such shall be judicially determined without regard to any legislative assertion on that subject.

Article 4, Section 34. General Laws.—The Legislature shall provide general laws for the transaction of any business that may be prohibited by Section 1 of this amendment (Section 33) and all such laws shall be uniform in their operation throughout the State.

[fol. 49] Return on Service of Writ

United States of America,
District of Minn., ss:

I hereby certify and return that I served the annexed Bill of complaint on the therein-named Sargent Land Co., a corporation, by

handing to and leaving a true and correct copy thereof with John O'Brien, as Secretary of the above named corporation, personally at Mpls. in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minn., ss:

I hereby certify and return that I served the annexed Bill of Com*pal*int on the therein-named J. A. O. Preus, as Governor of Minnesota, by handing to and leaving a true and correct copy thereof with H. C. Samuelson, as Executive Clerk of the Governor, personally at St. Paul in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Bill of Complaint on the therein-named Henry Rines, as State Treasurer of Minnesota by handing to and leaving a true and correct copy thereof with W. C. Martin, Chief Deputy Treasurer personally at St. Paul, in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 50] Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Bill of Complaint on the therein-named Raymond P. Chase, as State Auditor of Minnesota by handing to and leaving a true and correct copy thereof with M. J. Desmond, as Chief Deputy Auditor personally at St. Paul in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Bill of Complaint on the therein-named Odin Halden a member of the Minnesota Tax Commission and Clifford L. Hilton, Attorney General of Minnesota, by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul in said District on the 10th day of January, A. D., 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Bill of Complaint on the therein-named Samuel Lord and J. G. Armson, Members of the Minnesota Tax Commission by handing to -- leaving a true and correct copy thereof with Odin Halden, Chairman of the Minnesota Tax Commission personally at St. Paul, in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANT SARGENT LAND COMPANY—Filed Feb. 9, 1924

The above named defendant, Sargent Land Company, for its separate answer to the Bill of Compaint of plaintiff in the above entitled cause respectfully represents and states to the Court as follows:

(1) This defendant admits the allegations set forth in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10), except that in said paragraph (10) defendant has no knowledge or information sufficient to form a belief as to whether the diminution of the distributive shares of the stockholders of this defendant by the payment by this corporation of the royalty tax referred to in said complaint will be unlawful, or will unlawfully interfere with and prevent the carrying out of the purposes for which this defendant was created; and this defendant also admits the allegations set forth in paragraphs (12), (13), (14), (21) and (22) and each of them in [fol. 52] said Bill of Complaint contained; but this defendant denies any knowledge or information sufficient to form a belief as to the allegations, or any of them, contained in paragraphs (11), (15), (16), (17), (18), (19) and (20) therein contained and therefore denies the same.

(2) This defendant further answering alleges that on the 31st day of January, 1924, it duly made its verified report, as required by Chapter 226 of the laws of 1923, and duly filed the same with the Minnesota Tax Commission described in plaintiff's Bill of Complaint, which said report correctly set forth the amount of royalty received by defendant during the calendar year 1923 under and by virtue of the four mining leases described in paragraph (6) of plaintiff's Bill of Complaint, and also the amount of payments received

by this defendant during the calendar year 1923 under and by virtue of the sale agreement set forth in paragraph (7) of plaintiff's Bill of Complaint.

(3) That on or about the 5th day of September, 1923, this defendant sold and conveyed the fee of the North half (N. ½) of the Southwest quarter (S. W. ¼) of section twenty-four (24), township fifty-seven (57), range twenty-two (22) in said report more particularly described, and all the right, title and interest of this defendant therein to the lessee thereof, at and for a consideration in money then and there received by this defendant, and that said lease was simultaneously therewith duly canceled, surrendered and merged, and that no royalties have since been, or will be hereafter, received by this defendant for or on account of said lease, or for or on account of any interest of this defendant in said premises.

(4) That on or about the 31st day of October, 1923, the lease hitherto existing covering the Northeast quarter (N. E. ¼) of the [fol. 53] Northeast quarter (N. E. ¼) of section thirty-two (32), township fifty-seven (57), range twenty-two (22), more particularly described in said report, was duly canceled, surrendered and terminated by the lessee thereof, in accordance with the terms and conditions of said lease, and that no royalties have since been, or will be hereafter, received by this defendant for or on account of said lease, or for or on account of any interest of this defendant in said premises.

(5) That on or about the 31st day of December, 1923, the lease heretofore existing covering the Southwest quarter (S. W. ¼) of the Southwest quarter (S. W. ¼) of section thirty-five (35), township fifty-eight (58), range twenty-one (21), more particularly described in said report, was duly canceled, surrendered and terminated by the lessee thereof as provided under the terms thereof, and that no royalties have since been, or will be hereafter, received by this defendant at any time hereafter for or on account of said lease or for or on account of any interest of this defendant in said premises; that all the merchantable ore has been mined out and removed therefrom, and that none now remains in said premises, as this defendant is informed and verily believes, and that said land is now of little or no value.

Wherefore, this defendant, having thus made a full answer to all the matters and things contained in the Bill of Complaint, offers to abide by the final decision and judgment entered in this suit.

L. P. McNally, Solicitor for Defendant Sargent Land Company, 900 Metropolitan Life Bldg., Minneapolis, Minnesota.

[fol. 54] Sworn to by John O'Brien. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS SAMUEL LORD ET AL.—Filed Jan. 30, 1924

The defendants Samuel Lord, James G. Armson, Odin Halden, Clifford L. Hilton, Raymond P. Chase and Henry Rines, for their joint and several answers to the bill of complaint of the plaintiffs in the above entitled cause, respectfully represent and state to the court as follows:

I

These defendants state that they have no knowledge as to the allegations of paragraph 1 of the bill of complaint, but believe the allegations to be true.

II

These defendants admit the allegations of paragraph 2 of the bill of complaint.

III

These defendants admit the allegations of paragraph 3 of the bill of complaint, except that they allege that the defendant Clifford L. Hilton is a resident of Ottertail County, Minnesota.

[fol. 56] IV

These defendants admit that since December 28, 1909, the articles of incorporation of the defendant Sargent Land Company have stated and do now state the general purposes of said corporation to be as set forth in paragraph 4 of the bill of complaint, and these defendants further state that they have no knowledge or belief as to the other allegations contained in said paragraph 4.

V

These defendants admit that since December 28, 1909, said Sargent Land Company has not been authorized by its articles of incorporation to open, develop or operate mines upon its lands or any of them or elsewhere, as set forth in paragraph 5 of the bill of complaint, and further state that they have no knowledge or belief as to the other allegations contained in said paragraph 5.

VI

These defendants state that they have no knowledge as to the allegations of paragraph 6 of the bill of complaint, but believe the allegations to be true.

VII

These defendants deny that the payments made to said Sargent Land Company, as set forth in paragraph 7 of the bill of complaint,

were not royalties received for permission to explore, mine, take out and remove ore from said lands, and deny that said payments were or are the agreed purchase price paid by the vendee in the sale agreement therein mentioned for the ore therein described, and further state that they have no knowledge or belief as to the other allegations contained in said paragraph 7.

VIII

These defendants state that they have no knowledge or belief as [fol. 57] to the allegations contained in paragraph 8 of the bill of complaint.

IX

These defendants admit the allegations of paragraph 9 of the bill of complaint.

X

These defendants state that they have no knowledge as to the amount of the royalty tax that will be levied against the defendant Sargent Land Company under the provisions of chapter 226, Laws of Minnesota for 1923, but believe that said amount will be large; and they expressly deny that the payment of said tax will unlawfully diminish the distributive shares to which the plaintiffs and other shareholders of said company are entitled in the assets of the company, and deny that the levy and collection of said tax will unlawfully interfere with or prevent the carrying out of the purposes for which the company was created.

XI

These defendants admit that this is a suit brought in equity to restrain the defendants from acting under the provisions of said statute and from carrying out and enforcing the provisions thereof, and expressly deny that said statute or any act done or threatened to be done thereunder violate the constitution of the United States or the constitution of the State of Minnesota in respect of any of the matters set forth in paragraph 11 of the bill of complaint.

XII

These defendants admit the allegations of paragraph 12 of the bill of complaint.

XIII

These defendants admit the allegations of paragraph 13 of the bill of complaint.

XIV

These defendants admit the allegations of paragraph 14 of the bill [fol. 58] of complaint.

XV

These defendants deny the allegations of paragraph 15 of the bill of complaint.

XVI

These defendants deny the allegations of paragraph 16 of the bill of complaint, except that they admit that the lands and ore of said Sargent Land Company in the State of Minnesota are subjected to an annual ad valorem tax, and that no provision is made in said statute for deduction, from the royalties proposed to be taxed thereunder, or any portion thereof as constituting a conversion and return to a taxpayer of capital assets.

XVII

These defendants deny the allegations of paragraph 17 of the bill of complaint.

XVIII

These defendants deny the allegations of paragraph 18 of the bill of complaint.

XIX

These defendants deny the allegations of paragraph 19 of the bill of complaint.

XX

These defendants deny the allegations of paragraph 20 of the bill of complaint.

XXI

These defendants deny that by the payment of the tax bill royalties as required by said statute the funds and assets of said Sargent Land Company will be unlawfully depleted, and deny that the plaintiffs and other shareholders of said corporation will be unlawfully deprived of their property, and further state that they have no [fol. 59] knowledge as to the other allegations of paragraph 21, but believe them to be true.

XXII

These defendants admit the allegations of paragraph 22 of the bill of complaint, except that they deny that the threatened action of the defendants Lord, Armson and Halden as in said paragraph set forth will be wrongful or unlawful.

Having thus made a full answer to all the matters and things contained in the bill, these defendants pray that the bill be dismissed as to them and for judgment for their costs in this behalf incurred.

Dated January 29, 1924.

Clifford L. Hilton, Attorney General; C. A. Youngquist, Assistant Attorney General; Patrick J. Ryan, Solicitors for Defendants Samuel Lord, James G. Armson, Odin Halden, Clifford L. Hilton, Raymond P. Chase, and Henry Rines, 102 State Capitol, St. Paul, Minnesota.

[fol. 60] Sworn to by Samuel Lord. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER AND ORDER TO SHOW CAUSE—Filed Jan. 11, 1924

To each of the above-named defendants respectively:

Whereas in the above entitled case it has been made to appear on the verified bill of complaint filed herein which was on the 7th day of January, 1924, presented to the Honorable Wilbur F. Booth, Judge of the United States District Court for the District of Minnesota, Fourth Division, that a preliminary injunction together with a temporary restraining order until the hearing upon such preliminary injunction are necessary and proper herein, and that prima facia the plaintiffs are entitled to such preliminary injunction and temporary restraining order, restraining the defendants herein from doing the acts complained of and threatened to be committed; and it appearing to the Court that plaintiffs herein would suffer immediate and irremediable damages and injury by the commission of the acts complained of and threatened to be committed by said defendants; in this, that defendant Sargent Land Company may and will as directed by its Board of Directors under resolution passed January 2, 1924, make and file immediately with the said Minnesota Tax Commission a report of all royalties and monies received by said Corporation in the year 1923 for permission to explor-, mine, take out or remove ore, or for or on account of any sale of ore, from land in the State of Minnesota as required by Chapter 226 of the Laws of 1923 of the State of Minnesota and may and will immediately open to the examination and inspection of said Minnesota Tax Commis-[fol. 62] sion all books, way bills, inventories, correspondence and memoranda of said Corporation relating to or used in the transaction of such business as further required by said Act or in default thereof be guilty of a misdemeanor; and that plaintiffs would have no adequate remedy at law therefor, and that said wrongful acts are of such character that they cannot be compensated for in damages, and that said acts will be committed before the hearing of such action and before the hearing upon the application for such preliminary injunction unless a restraining order is issued immediately and without notice to defendants;

Now, Therefore, on motion of the plaintiffs, it is ordered that the defendants, and each of them, appear before this Court at a session to be held in the Federal Building, in the City of Duluth, in the

State of Minnesota, in said District, upon Saturday, the 12th day of January, 1924, at 10 o'clock, in the forenoon of said day, and then and there show cause, if any there be, why the preliminary injunction therein prayed should not issue.

It is further ordered that a temporary restraining order *ne* and is hereby issued:

1. Commanding the defendant Sargent Land Company, its officers and agents and each of them, pending the further order of this court, absolutely to desist and refrain from, and said defendants and each of them are hereby restrained from, making or filing with the Minnesota Tax Commission the verified report or exhibiting to said Commission any of said Corporation's books or papers, in respect of the royalties or moneys received by said corporation in said year 1923 for permission to explore, mine, take out or remove ore, or for or on account of any sale of ore, from land in the State of Minnesota, as required by Section 3 of said Chapter 226 of the Laws of 1923, of the State of Minnesota, or otherwise; and from paying the tax or any part thereof that may be assessed against said corporation under or by virtue of said Chapter 226 and from taking any procedure or steps whatsoever to observe or comply with said Act or any part thereof.

2. Commanding said defendants, other than defendant Sargent Land Company, and each of them, pending the further order of this Court absolutely to desist and refrain from, and said defendants and each of them are hereby restrained from, levying, determining or imposing any tax or any penalties upon such tax under or by virtue [fol. 63] of the provision of said Chapter 226 of the Laws of 1923 of the State of Minnesota as against defendant Sargent Land Company; and from interfering with or harassing defendant Sargent Land Company, or its officers, agents or representatives, with reference to disclosing or furnishing information to the said defendants composing the Minnesota Tax Commission, and from demanding such information from defendant Sargent Land Company, in respect of any royalties or monies received by it in said year 1923 for permission to explor-, mine, take out or remove ore, or for or on account of an*t* sale of ore, from land in the State of Minnesota, as required by said Chapter 226 of said Laws of 1923 of the State of Minnesota; and from taking any further procedure as against defendant, Sargent Land Company under or by virtue of the provisions of said Act, or any of them.

Service of this order shall be made by copy thereof served on the defendants and each of them named in the bill of complaint.

Plaintiffs having given bond for Ten Thousand Dollars ($10,000.00) conditioned according to law, this order is hereby made immediately effective.

This order signed and issued this 7th day of January, 1924.

Wilbur F. Booth, Judge.

[fol. 64] Form No. 282

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order & Order to Show Cause on the therein-named J. A. O. Preus, as Governor of Minnesota, by handing to and leaving a true and correct copy thereof with H. E. Samuelson, as Executive Clerk of the Governor, personally at St. Paul, in said District, on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 65] Form No. 282

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota:

I hereby certify and return that I served the annexed Restraining Order and Order to Shoe Cause on the therein-named Sargent Land Co., a corporation, by handing to and leaving a true and correct copy thereof with John O'Brien, as Secretary of the above-named corporation, personally at Minneapolis, in said District, on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 66] Form No. 282

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Henry Rines, as State Treasurer of Minnesota, by handing to and leaving a true and correct copy thereof with W. C. Martin, Chief Deputy Treasurer, personally at St. Paul, in said District, on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 67] Form No. 282

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Reymond P.

Chase, as State Auditor of Minnesota, by handing to and leaving a true and correct copy thereof with M. J. Desmond, as Chief Deputy Auditor, personally at St. Paul, in said District, on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 68] Form No. 282

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Odin Halden, a member of the Minnesota Tax Commission and Clifford L. Hilton, Attorney General of Minnesota, by handing to and leaving a true and correct copy thereof with each of them personally at St. Paul, in said District, on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol.69] Return on Service of Writ

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order and Order to Show Cause on the therein-named Samuel Lord, and J. C. Armson members of the Minnesota Tax Commission, by handing to and leaving a true and correct copy thereof with Odin Halden, Chairman of the Minnesota Tax Commission, personally at St. Paul, in said District on the 10th day of January, A. D. 1924.

Edward Rustad, U. S. Marshal, by D. C. Horsnell, Deputy.

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING HEARING OF MOTION FOR PRELIMINARY INJUNCTION

The above entitled cause came on this day to be heard on motion by plaintiffs for a preliminary injunction, Messrs. Snyder, Gale & Richards appearing on behalf of the plaintiffs in support of said motion, Hon. Clifford L. Hilton, Attorney of Minnesota, G. A. Youngquist, Asst. Atty. Gen. of Minnesota and Patrick J. Ryan, appearing on behalf of defendants in opposition thereto; whereupon, it is by the Court

Ordered; That said motion be set for hearing before the Court at St. Paul, on April 7, 1924, at ten o'clock in the morning, and that

the temporary restraining order issued on January 7, 1924, be continued in force until the hearing and determination of said motion for preliminary injunction, and until the further order of the Court, and that an order be drawn in accordance herewith.

A true record. Attest:

Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

[File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING RESTRAINING ORDER—Filed Jan. 12, 1924

The above entitled matter having come duly before the court at a session thereof, held in the Federal Building in the City of Duluth in the State of Minnesota on Saturday the 12th day of January 1924 at 10:00 o'clock in the forenoon, upon the order to show cause hitherto issued therein, why the preliminary injunction in plaintiffs' bill of complaint prayed should not issue; and plaintiffs above named duly appearing by one of their solicitors, Edward C. Gale, Esq., and the defendants above named, except the Sargent Land Company, duly appearing by Clifford L. Hilton, Esq., as Attorney General of Minnesota and G. A. Youngquist, Esq. Assistant Attorney General, there being no appearance for said defendant Sargent Land Company; and all parties being heard on such motion and a *and a* stipulation being duly entered into in open court that the trial of said action should be set for April 7th, 1924, in the City of St. Paul in said State or as soon thereafter as counsel can be heard;

Now therefore, it is hereby ordered that the temporary restraining order hitherto issued in the above entitled proceeding under date of January 7th, 1924, be and the same hereby is continued in full force and effect and binding and obligatory upon said defendants and each of them as therein set forth, to and until the final determination of said action or until the further order of the court herein; except that said Sargent Land Company may, if it shall be so advised, make and file with the said Minnesota Tax Commission on or [fol. 72] before the 1st day of February, 1924 its verified report setting forth the amount of royalty received by said defendant during the preceding calendar year as required by Section 3 of said Chapter 226 of the Laws of 1923 of the State of Minnesota and except that defendants Samuel Lord, James G. Armson and Odin Halden as constituting the Minnesota Tax Commission may so receive and file such report.

Dated at Duluth, Minnesota, January 12, 1924.

Wm. A. Cant, Judge.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS—Filed April 7, 1924

It is hereby stipulated and agreed by and between the respective parties to the above entitled action that, for the purpose of the trial of said action and subject to objections as to their relevancy and materiality, the following facts may stand as admitted; that any party may, however, introduce evidence in the regular manner upon the trial of said action relative to any matters properly within the issues covered by the pleadings and not controverting the facts herein stipulated. Subject to such understanding, it is agreed as follows:

(1) Plaintiff Helen P. Bardwell is and for many years last past has been a resident and citizen of the State of Massachusetts, and each of the plaintiffs, Harriot P. Ayer and Alice P. Forman, for many years last past has been and now is a resident and a citizen of the State of California.

[fol. 74] (2) Defendant Sargent Land Company, is a corporation of the State of Minnesota, having its principal office and place of business in the City of Minneapolis in said state; defendant has a capital stock of two thousand one hundred sixty (2,160) shares, and each of the plaintiffs for a long time has been, and now is, the owner and holder of a large number of said shares.

(3 The matter in dispute in this suit exceeds, exclusive of interests and costs, the sum of three thousand dollars ($3,000.00).

(4) Said Sargent Land Company was organized for the primary purposes of receiving and uniting in one ownership the title to certain lands in the State of Minnesota, until then held by its numerous stockholders in individual ownership in undivided fractional shares, some of which were extremely small, in proportion to their respective ownership interests in said lands, and its original Articles of Incorporation, executed and filed in the office of the Secretary of State of Minnesota in the year 1906, stated the general nature of the business of the corporation to be as follows: "The general nature of its business shall be the buying, owning, exploring and developing, leasing, mining, selling and dealing in lands, tenements and hereditaments, and the doing of all things necessary or incidental to the things above specified."

In the year 1909 the Articles of Incorporation of said company were amended so as to state and provide, and the same do now state and provide, that the general purposes of said corporation shall be "to unite in one ownership the undivided fractional interests of its various stockholders in lands, tenements and hereditaments, and to own such property, and, for the convenience of its stockholders, to receive and distribute among them the proceeds of any disposition of such property, at such times, in such amounts, and in such man-

ner as the Board of Directors may determine." Said corporation has no purpose or purposes other than those so specified and limited in [fol. 75] its said Articles of Incorporation, and it has at all times held all of its unliquidated corporate property for such purposes, and for no other purpose. Under its said Articles of Incorporation said company, since the year 1909, has not been, and is not, authorized to open, develop or operate mines upon its said lands, or any of them, or elsewhere, and it has never opened, developed or operated any mine or mines, and has never been engaged and is not now engaged in any business or occupation, except as set forth in its Articles of Incorporation, as above quoted.

(5) After the organization of said Sargent Land Company, the title to the lands owned by its numerous stockholders, as aforesaid, was duly conveyed to the corporation by the various owners thereof, and, by virtue thereof, said Sargent Land Company became the owner in fee of numerous tracts and parcels of land in the State of Minnesota of large value. The consideration paid by said company for the conveyance to it of said lands was the issuance and delivery to said various individual owners of its capital stock, in proportion to their respective interests in said lands. Said lands represented, in the ownership of said individuals so conveying the same, and in the ownership of said Sargent Land Company, a large value. At the time of the conveyance of said lands to said corporation, the chief value thereof did and now does consist in deposits of iron ore. The only convenient and practical means of realizing upon such of the assets of said company as consist of mineral lands, and of effecting the purposes of its incorporation in relation thereto, were at all times since the conveyance of said lands to said company, and now are, the leasing of said mineral lands to be opened, developed, operated and mined by lessees, or selling and conveying the fee of said lands, or selling the iron ore contained therein, to be mined and removed by the vendees of the same.

[fol. 76] (6) The individual defendants in this suit are residents of the State of Minnesota, and Samuel Lord, James G. Armson and Odin Halden constitute the Minnesota Tax Commission of said State; Clifford L. Hilton is the Attorney General of said State; Raymond P. Chase is the State Auditor of said State, and Henry Rines is the State Treasurer of said State, all as alleged in paragraph (3) of said complaint.

(7) During the year 1923 and prior thereto, said Sargent Land Company was the owner in fee of various tracts of land containing valuable deposits of iron ore, the chief value of which tracts consisted, and consists, in the ore deposits thereon. Certain of said tracts were not at any time during the year 1923, and are not now, leased or mined, and no ore has been sold therefrom, and no royalties have been received on account of the mining or removal of ore therefrom during the year 1923, or at any time; but during the said year 1923, and prior years, said tracts of land were taxed, ad valorem, as mineral lands, and the taxes thereon for said years have been or will be paid in due course.

(8) Four of the tracts of land owned by said company, on which deposits of iron ore exist, were leased to certain lessees during portions of said year 1923, and prior thereto, under and by virtue of four separate mining leases, all in substantially the same form as exhibit "1" attached to the bill of complaint in this suit, the descriptions of the particular tracts, and the amounts of royalty payable under said leases varying to conform to the facts in each case.

(9) During the year 1923 said Sargent Land Company derived from royalties payable under said leases, either by way of royalties paid to it in advance of the mining and shipment of ore from said land, or by way of royalties paid to it for ore actually mined and shipped therefrom, large amounts of money; and said company will [fol. 77] continue to receive considerable amounts of money from and on account of said royalty payments while said mining leases or any of them remain in force. Two of said mining leases were, however, duly canceled, surrendered and terminated during the year 1923, in accordance with the express provisions thereof, and no royalties have since been or will hereafter be received by said company under either of said leases. On or about the 5th day of September, 1923, said company sold and conveyed the fee of the land described and included in another of said mining leases, together with all the right, title and interest of said company therein, for a consideration in money paid by the purchaser of said land; said land was so sold outright by said company, which has no further right, title or interest therein, and the mining lease covering the same was canceled and surrendered.

(10) Of the moneys received by said Sargent Land Company as royalties in the year 1923, the sum of $9,559.32 was paid on account of ore actually mined and removed from leased lands of said company in the year 1922, and the sum of $450.00 was received by said company in the year 1923, on account of advance royalty for the year 1922 due and payable October 25, 1922, but not in fact paid until the year 1923.

(11) Said Sargent Land Company, prior to the year 1923, with reference to one of its said tracts of mineral lands, entered into a certain agreement of which exhibit "2" attached to the bill of complaint herein is a true copy, and said Sargent Land Company received from payments made to it in the year 1923, under the provisions of said agreement, a substantial amount of money, a portion of which, however, was for and on account of iron ore mined and removed from said land during the year 1922.

(12) At all times since its organization said Sargent Land Company has maintained an office for the purpose of conducting its [fol. 78] corporate affairs, for the maintenance of which, and the proper inspection of its properties and the operations conducted upon its mineral lands, said company is subjected to a considerable expense, which has been and will be paid wholly, or in large part, out of the receipts of said company from royalties derived under such mining leases, and under said agreement, exhibit "2". Said items

of expense, together with taxes and other miscellaneous items, are paid, or provided for, by said company out of the moneys received from the leasing and/or sale of its property and before any distribution of such moneys is made to its stockholders, and the distributive interests of said stockholders in such moneys are diminished to the extent of all such prior payments.

(13) In pursuance of the purpose of the corporation, it has been the practice of the Sargent Land Company, from time to time, as it receives moneys from the sale and/or leasing of its property, to distribute the same to its stockholders in proportion to their respective holdings of the capital stock of the company; and the respective distributive interests of said stockholders in all of the receipts of the corporation are diminished only by the amounts retained by the corporation for the purpose of meeting the necessary operating expenses of the corporation, including taxes and other charges lawfully imposed upon it, and the property owned by it.

(14) The legislature of the State of Minnesota, at its session of 1923, enacted Chapter 226 of the Laws of Minnesota for said year, entitled "An Act providing for the levy and collection of a tax on royalties received by the owner of any right, title or interest in land situated in this state, for permission to explore, mine, take out and remove, ore from the same," which act was approved by the Governor of said state April 11, 1923, a true copy of which act [fol. 79] is set out in exhibit "3" attached to the bill of complaint in this suit.

(15) At the time of the enactment of said Chapter 226 of the laws of 1923, and prior thereto since the organization of the corporation, the mineral bearing lands of said Sargent Land Company had a large value, and constituted the principal assets of said company, and as such represented, in large part, its invested capital, and gave to the shares of stock of said company their chief value; and the annual ad valorem taxes imposed upon real property under the laws of Minnesota have been at all times, and still are, assessed upon said lands, and all of the iron ore in place therein; and the valuation of all of said tracts of land for purposes of taxation is based chiefly upon the value of said iron ore.

(16) The mineral bearing lands owned by said Sargent Land Company constitute a small portion of the mineral lands in private ownership in the State of Minnesota; a large part of said other lands is leased by the owners thereof to different lessees under contracts similar in their nature to exhibit "1" attached to the bill of complaint; and several tracts of said mineral lands, not exceeding ten (10) in number, are subject to contracts similar in form to exhibit "2" attached to said bill of complaint, and the owners of said lands are respectively in the same position as is said Sargent Land Company, and are similarly affected by the operation of said Chapter 226 of the Laws of 1923.

(17) In the year 1923 there were in Minnesota 124 mines in operation producing approximately 45,000,000 tons of ore.

There were during the year 1923 in Minnesota four instances in which fee owners operated their own properties and sold the ore produced without receiving or paying royalties thereon. In two of those instances the operation was largely a cleaning up process, [fol. 80] the mines being near exhaustion; the ore produced from these two properties amounting to approximately 92,000 tons. In the third instance the operator mined his fee owned property in connection with adjoining leased property, producing from the former 91,000 tons of ore and from the latter 111,000 tons of ore. In the fourth instance there remained at the beginning of 1923 about 250,000 tons of open pit ore, of which 128,000 tons were removed in 1923 and the remainder of which the owner intends to remove forthwith, and that there will then remain 3,200,000 tons of underground ore which the owner does not intend to mine for several years to come, but does intend to mine later.

(18) Many of the owners of mineral lands in the State of Minnesota, who have leased their lands to others to explore, mine take out and remove, ore from the same, are non-residents of the State of Minnesota, and the royalties paid to them under their said mining leases are transmitted to them from Minnesota, or from points outside of Minnesota, and are received by them outside of the State of Minnesota.

(19) (a) At a duly convened meeting of the Board of Directors of said Sargent Land Company, at which a quorum of said directors was present, the following resolution was duly presented and its adoption moved and seconded, but upon being put to vote the same was defeated, only two votes being recorded in the affirmative and the votes of the other directors present being recorded in the negative:

"Whereas, Chapter 226 of the laws of Minnesota for 1923 purports to impose a tax upon all royalty received during each calendar year for permission to explore, mine, take out and remove ore from land in this State, beginning with the year 1923 said tax to be at the rate of six percentum (6%) per annum; and requires every person to whom royalty is paid to make and file with the Minnesota Tax Commission on or before the first day of February, 1924 (for royalty receipts during the year 1923), and annually thereafter on or before said day, a duly verified report setting forth [fol. 81] the amount of royalty received, and such other information as may be required by said Commission; and

"Whereas, said act contains other provisions relating to the determination of the correct amount of such royalty receipts and the mode of levying and enforcing payment of said tax thereon; and

"Whereas, said act is believed to be unconstitutional and void, as not being uniform upon the same class of subjects, as depriving citizens of this State of the equal protection of the laws, as taking private property for public use without just compensation, and

as depriving persons subject to said tax of their property without due process of law;

"Resolved, that this corporation refuse to make and file the report required by section 3 of said act, and refuse to pay any tax that may be imposed or attempted to be imposed upon it under any provision of said act.

"Resolved, further, that the officers of this corporation be and they are hereby instructed forthwith to take such action as may be approved and advised by its counsel to restrain the public officers charged in said Act with the duties of carrying out and enforcing the provisions thereof from so doing, and to prosecute such action or actions as may be necessary to determine the validity of said act in the Court of last resort."

(b) Thereupon, upon motion duly made and seconded the following resolution was adopted by a majority vote of the directors present:

"Resolved, that the proper officers of this corporation be and they are hereby instructed to make and file with the Minnesota Tax Commission the duly verified report of this corporation setting forth the amount of royalty received by it, during the calendar year 1923, for permission to explore, mine, take out and remove ore from lands in this State owned by this corporation, or from any interests in any such lands owned by this corporation, together with such other information as said Commission may require; and in all things to comply with all the provisions of Chapter 226 of the laws of Minnesota for 1923 obligatory upon this corporation as a receiver of such royalties."

(c) Pursuant to said last named motion, the officers of said company did make and file, on or before the first day of February, 1924, the report of royalty receipts for the year 1923 required by said Chapter 226 of the Laws of 1923, and a majority of the directors of said company, and the officers thereof, threaten to and will, [fol. 82] out of the treasury of said company unless restrained therefrom in this suit, pay the tax upon the royalties received by said company during the year 1923, in accordance with the requirements of said Chapter 226.

(20) The defendants Samuel Lord, James C. Armson and Odin Halden, acting as the Minnesota Tax Commission, threaten to and will, unless restrained by this Court, proceed to fix the amount of the tax payable by said Sargent Land Company as such amount may be determined by them on account of royalties received by said company during the year 1923; and said defendants will include, as a portion of the royalties so taxable under the provisions of said Chapter 226, the moneys paid to said company under and by virtue of payments made in said year 1923 under the provisions of said agreement, exhibit "2". And said defendants threaten to and will, unless restrained in this suit from so doing, levy such taxes and certify the same to the defendant Chase as State Auditor; and said Chase threatens to and will, unless restrained in this suit from so doing, make his draft upon said company for the amount so certi-

fied, and place the same in the hands of defendant Rines, as State Treasurer, for collection. Said defendant Rines, as State Treasurer, threatens to, and will, unless restrained from so doing in this suit, attempt to collect the amount of said draft, and will, upon the failure or refusal of said company to pay the same, deliver said draft to the defendant Hilton, as Attorney General of the State of Minnesota, as required by section 10 of said Chapter 226, and said Hilton threatens to, and will, unless restrained in this suit from so doing, bring action thereon against said company for the amount of said draft, together with interest, penalties and costs.

(21) In case said Sargent Land Company shall pay any tax levied and required to be paid by it, in accordance with the provisions of said Chapter 226, the amount so paid cannot be recovered by said [fol. 83] corporation under any existing statute of the State of Minnesota, even if thereafter said Chapter 226 should be held to be null and void, as violating the provisions of the Constitution of the State of Minnesota, and/or the Constitution of the United States.

(22) Sections 1972, 1973, 1974 and 1975 of the General Statutes of Minnesota for 1913 are laws of the State of Minnesota, as set out in exhibit "4" attached to the bill of complaint in this suit, and section 1988 as amended by Chapter 140 of the Laws of 1923, and section 2316, as amended by Chapter 102 of the Laws of 1923, are laws of the State of Minnesota, and are correctly set out in said exhibit "4" attached to said bill of complaint.

(23) The moneys accruing to said Sargent Land Company during the year 1923, under and by virtue of its said mining leases and of said agreement exhibit "2" attached to the bill of complaint, were paid to and received by it at the City of Minneapolis, Minnesota.

John R. Van Derlip, Fred B. Snyder, Edward C. Gale, Solicitors for Plaintiffs. Leo. P. McNally, Solicitor for Sargent Land Company. Clifford L. Hilton, Attorney General of the State of Minnesota; G. A. Youngquist, Asst. to Attorney General; Patrick J. Ryan, Solicitor- for Defendants.

Dated April 4, 1924.

[fol. 84] [File endorsement omitted.]

[fol. 85] IN UNITED STATES DISTRICT COURT

MEMORANDUM DECISION IN THE CASE OF ROYAL MINERAL ASSOCIATION VS. LORD—Filed Jan. 10, 1925

During the year 1921, the Legislature of the State of Minnesota enacted Chapter 223 of the laws of that year. This Act provided for the levy of a tax payable annually and amounting to six per cent of the valuation of all ore mined or produced within the State

during the calendar year. Under the Act, such valuation is ascertained by making certain deductions from the value of such ore at the place where the same is brought to the surface of the earth. Among such deductions is: "4. The amount of royalties paid on the ore mined or produced during the year." This is an occupation tax. Oliver Iron Mining Co. vs. Lord et al., 262 U. S. 172. It is collectible by suit against the person from whom the same is due the same as other demands are enforceable.

During the year 1923, the legislature of that State enacted Chapter 226 of the laws of that year. This Act provides that "There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter for permission to explore, mine and take out and remove ore from land in this State, a tax of six (6) per cent." By Section 8 of the Act, this tax is made a specific lien on the interest of the person from whom the tax shall be due, in and to the land on account of which the royalties are paid. Provision is also made for collection of the amount due by suit and by a sale thereunder of the interest in such land held by the person from whom the tax shall be due.

Various persons and corporations who are in receipt of royalty from ore lands in said State urge that the tax imposed under Chapter 226, supra, is in violation of certain provisions of the Constitution of the State of Minnesota, and of certain other provisions of the Constitution of the United States, and they have brought a number of actions, of which this is one, to enjoin the enforcement of the tax. In a large way, the question is whether the Act runs counter to any of the constitutional provisions which have been invoked.

The important provision of the State constitution which is involved, is that "Taxes shall be uniform upon the same class of subjects." Article 9, Section 1.

The important provisions of the Constitution of the United States which are involved are found in that part of the Fourteenth Amendment, which reads: "Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Other constitutional provisions have been discussed on the argument and in the briefs. Without overlooking or minimizing the force of any of them, it may be said that they are either involved in a discussion of the specific provisions above set forth, or they yield to the argument which may be made against them. It is urged, for example, that the Act violates that provision of the Constitution of the United States which provides that "No State shall * * * pass any * * * law impairing the obligation of contracts." Article 1, Section 10. Giving the argument in that behalf due weight and consideration, it does not appear that the provision referred to is [fol. 86] applicable here. The laws as to taxation and the amount of the levy in any particular year are subject to constant change. All contracts are made subject to the right and the power of the State to make such modification in the laws with respect to future taxation as may seem necessary. Contracting parties may not in

effect agree that the State shall not modify its revenue laws, or shall not either increase or diminish the burden of taxation. If the enactment in question is otherwise valid, it will stand as against this objection.

Speaking generally, unless the Act in question is invalid as against the uniformity clause of the State Constitution, with reference to taxation, above quoted, or as against the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, above quoted, it must stand. These provisions and the discussion thereunder are closely related in a case of this kind. The matter may be reduced to still lower terms. The question is whether this court should hold that the classification, royalties, adopted by the legislature of the State of Minnesota, as a basis of taxation, or for the computation of the tax under Chapter 226, Laws of Minnesota, 1923, is invalid, and that the tax levied pursuant thereto is void.

1. The following rules are specially applicable to the uniformity clause of the State Constitution:

(a) Where that clause is invoked in advance of a decision by the Supreme Court of the State, holding a state law to be in violation thereof, Federal Courts will not so declare, unless such holding shall be imperatively necessary. If there has been no decision by the Supreme Court of the State, the Federal Court will seek to anticipate what the holding of the State Court would be, and will decide accordingly.

Louisville & Nashville R. R. Co. vs. Garrett et al, 231 U. S. 298, 305;
Pelton vs. National Bank, 101, U. S. 143, 144;
Pullman vs. Knott, 235 U. S. 23, 27;
Michigan Central R. R. Co. vs. Powers, 201 U. S. 245, 291;
Coulter vs. Louisville & Nashville R. R. Co. 196 U. S. 599, 609.

(b) The two cases last above referred to clearly indicate that the Federal Courts are especially loth to interfere where the Act in question involves the revenues of the State.

(c) The Supreme Court of the State of Minnesota has not passed upon the validity of the Act in question.

(d) The holdings of the Supreme Court of the State of Minnesota, as respects classification for the purpose of taxation, are that the legislature has a very wide range of discretionary power. Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 181. State vs. Royal Mineral Ass'n. 132 Minn. 232, 235. There are well recognized limitations to this power which serve as guides in the exercise thereof. "The classification must be reasonable, and such as is suggested by essential differences of nature, situation, or circumstances, or by characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular

method of taxation, and impracticable to apply thereto the ordinary [fol. 87] methods of taxation."

Mutual Benefit Insurance Co. vs. County of Martin, 104 Minn. 179, 181, 182;
State ex rel. St. Paul City Ry. Co. vs. Minnesota Tax Commission, 128 Minn. 384.

2. The following rules are applicable to cases where the due process clause or the equal protection clause of the Fourteenth Amendment is invoked, or where one or both of those clauses and the uniformity clause of the State Constitution are involved.

(a) Under all the authorities the classification must be a reasonable one and such as essential differences suggest.

State ex rel vs. Minnesota Tax Commission, 128 Minn. 384;
Gulf Colorado & S. F. Ry. Co. vs. Ellis, 156 U. S. 150, 155;
Southern Ry. Co. vs. Greene, 216 U. S. 400, 417.

(b) The decided policy of the Supreme Court of the United States when the foregoing clauses are invoked, is to announce and enforce the rule allowing State legislatures a wide discretionary power with respect to classification for purposes of taxation. Bell's Gap Ry. R. Co. vs. Penn. 134 U. S. 232.

"Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. Keeney as Admr. vs. Comptroller, etc. 222 U. S. 525, 536. The State is not bound by any rigid equality." Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331."

"Any classification is permissible which has a reasonable relation to some permitted end of Governmental action. It is not necessary * * * that the basis of the classification must be deducible from the nature of the things classified * * *. It is enough, for instance, if the classification is reasonably founded in 'the purpose and policy of taxation."

Watson vs. State Comptroller, 254 U. S. 122, 124, 125;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255.

"Passing on that amendment (the 14th) we have repeatedly decided * * * that it does not take from the States the power of classification, and also that such classification need not be either logically appropriate or scientifically accurate. * * * A wide range of discretion, therefore, is necessary in legislation to make it practical." District of Columbia vs. Brooke, 214 U. S. 138, 150.

There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment. Middleton vs. Texas Power & Light Co., 249 U. S. 152, 157."

[fol. 88] Without extended discussion, the same view is taken in National Paper & Type Co. vs. Frank K. Bowers, Collector, U. S. Supreme Court, Dec. 15, 1924.

The equal protection clause of the Fourteenth Amendment does not prohibit double taxation by the States.

Shaffer vs. Carter, 252 U. S. 37, 58;
Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325, 330.

(c) The limitation upon this power of classification is that "It must not be exercised in clear and hostile discrimination between particular persons and classes."

Citizens' Tel. Co. vs. Fuller, 229 U. S. 322, 331;
Heisler vs. Thomas Colliery Co. 260 U. S. 245, 255;
Bell's Gap R. R. Co. vs. Penn. 134 U. S. 232, 237."

(d) In Dawson vs. Kentucky Distilleries Co. 255 U. S. 288:

(1) The Court was dealing with a nondescript imposition from the beginning.

(2) The basis of the alleged classification and tax was elusive, shifty and unsatisfactory. It was not uniform on property of essentially the same class.

(3) The Act "Imposed upon every person engaged in the business of manufacturing whisky, or in the business of owning and storing the same in bonded warehouses within the State, what was called an 'annual license tax' of fifty cents a gallon upon all whisky either withdrawn from bond or transferred in bond from Kentucky to a point outside the state."

(4) Though called an annual license tax in the Act, the imposition was held to be a tax on the property.

(5) On the argument it was conceded by the authorities seeking to uphold the tax, that if it was a tax on property, the same was void.

(6) In view of the concession so made, the question of classification was not given extended discussion by the Court.

3. Various facts bearing upon the propriety and justice of the classification here involved must be considered.

The iron deposits constitute a very substantial part of the easily available great natural wealth of the State of Minnesota. Development and operation of iron mines, a highly necessary and important industry, means at the same time the exhaustion of that wealth. Such exhaustion attends also the removal of the products of stone quarries and of gravel beds and the cutting and removal of certain kinds of timber. Generally, the development and successful prosecution of any enterprise increases the taxable wealth of the State. In large part, the products of quarries, gravel beds and forests remain within the State in some form serve as the basis of taxation therein. With respect to iron ore, however, practically all that is mined is being transported beyond the limits of the State. Great natural wealth which serves as the basis of taxation is annually [fol. 89] being withdrawn therefrom. Of necessity the revenues of the State will be substantially affected thereby.

4. Without doubt, when the Legislature of 1923, met and considered problems of taxation, it knew of Chapter 223, Laws of 1921. State vs. Klasen, 123 Minn. 382. That Act was presumably valid. On its face it pointed to the fact that one of the interests concerned in the mining industry was thereby subjected to a tax of six per cent. It also disclosed the fact that in cases where the mine was leased, the other interest, that represented by the person who received royalties, was not subjected to any such burden. The legislature found this latter class already carved out by the earlier Act. In 1923, the general purpose apparently was to assure the State a return of a full six per cent, less certain minor deductions, on the value of all ore mined and brought to the surface of the earth. And the further general purpose apparently was to adjust this burden equitably as between the two classes of interests concerned in the operation where the mine was being operated by a lessee. One of these classes, represented by the operator, was specified in Chapter 223, supra, and the tax burden by that Act was imposed thereon. The other interest, represented by those receiving royalties was specified in Chapter 226, Laws of 1923, and a tax in a different form was imposed on that class. The latter Act was designed to complement the former, which related to the same general subject matter. In the consideration of this case, it is neither possible, nor proper to divorce entirely the two acts which have been referred to. Either separately, or together, they indicate the policy of the State with reference to the taxation of the interests therein specified.

5. The Federal Constitution does not require that the two classes above referred to should have been covered by the same enactment, or that the two together should have exhausted the subject and covered the entire field. "The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment." Supra.

6. The basis of classification which may be invoked in support of Chapter 226, is the circumstance or condition that, of necessity, the lands to which the Act applies, in the course of their development, as operating mines, are being and will be depleted in value and ultimately will be lost to the State as a source of substantial revenue. This is the underlying consideration. The desire of the legislature was to reach the interests involved in property of that class and apply thereto a special tax. If such lands may properly be placed in a class by themselves, the rest is a matter of identifying the interests therein for the purpose of taxation. This latter may be called classification of such interests, but it is little more than identification thereof—a pointing out and specifying of the particular interests sought to be taxed.

7. We are concerned to learn whether there was reasonable ground for this classification, and whether under the provisions of the Act, [fol. 90] all within the class involved in Chapter 226, may be treated alike. The burden is on the plaintiff to answer one or both of these questions clearly in the negative. If there has been no "clear and

hostile discrimination between particular persons and classes," the law should stand.

Having in mind the real basis for the classification adopted, the fact that other mining properties, not in process of being wasted or depleted, are not included under the provisions of the Act, is not important. This is true whether they are being sold and transferred from time to time, like other property, or are not. With the lapse of time, as such properties come within the class contemplated, the Act will apply. In time, presumably, all ore-bearing properties of substantial value in the State will become subject to the provisions of the law in question.

Chapter 226 is not invalid, because it may be subject to technical criticism, or will not work with perfect nicety of detail, or because conditions may be thought of which would seem to involve differences and inequalities.

"The difference, however, is one such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases and cannot be regarded as an unfriendly or unreasonable discrimination."

Shaffer vs. Carter, 252 U. S. 37, 57.

In Oliver Iron Mining Co. vs. Lord, et al., 262 U. S. 172, 181, the Court says: "It is also said that the royalty provision and others respecting taxes will work a discrimination as between lessees in that some will be subjected to a higher tax than others. No doubt, there will be differences in the amount, but they will result from differences in situation and not from differences in treatment. Some lessees pay higher royalties than others and will secure a higher deduction on that score. * * * In short, the tax is to be adjusted to the value of the output, less the major expenses of the business, and this according to uniform rules. We, therefore, cannot say that it is intended to, or will work any arbitrary or unreasonable discrimination as between different lessees."

The circumstance that during the year 1923, plaintiff may have been assessed under the head of "Money and credits," on account of funds then on hand and received as royalties during that year, falls within the foregoing observations and authorities.

The fact that other wasting properties, such as stone quarries, or gravel beds, or certain timber areas are not included in the Act here under consideration, does not invalidate the classification. They might have been included, but the differences and distinctions between them and that which was included, justifies their omission. The differences upon which to base a classification "Need not be great or conspicuous." Supra. Anthracite coal may be classified separately from bituminous coal. Meat packing may be classified separately from the packing of other food products. A special tax may be imposed on dealers in certain specified articles, while dealers in other articles go free.

Heisler vs. Thomas Colliery Co. 260 U. S. 245;
Armour Packing Co. vs. Lacy, 200 U. S. 226;
Southwestern Oil Co. vs. Texas, 217 U. S. 114, 121.

[fol. 91] 8. The legislature has made the classification. First, in a class by themselves, are the ore lands which are in process of being mined, and, therefore, depleted, and which within a comparatively brief time will be lost to the State as a source of revenue. This clearly distinguishes these lands from other lands in general and from other ore lands in particular. The distinction is based on grounds which have a legitimate relation to the question of taxation. Facing the depletion of certain lands and the loss of their value, the State might be justified in imposing a heavier tax thereon during the intervening time, knowing that when that time should elapse there could be no further substantial tax at all. There is no apparent difficulty in making the classification or in according uniformity of treatment in connection therewith.

9. Next is the identification of the separate interests here involved for purposes of taxation, or the classification thereof. As already indicated, as the mining operation and the depletion of the property are usually carried on, there are two classes of persons, or two sets of interests, and no more, concerned therein. They are the operator who does the mining, and the owner whose ore is being mined, and the respective interest of each. The interests of an intervening lessee are identified with those of the owner for the purposes here in mind. Although together, the owner and the operator are possessed of the entire interest in the property, their relations thereto are markedly different. So great is that difference that one class, or set of interests may be taxed without the other, as was done by the Act of 1921, and doubtless, different rates of taxation may be imposed, and, as will be seen, different forms of tax may be levied thereon. There is no practical difficulty in recognizing these two classes as separate and distinct for purposes of taxation, and in according uniformity of treatment to all within each class. It is a matter largely of specifying interests, very different in character, which it is sought to reach for purposes of taxation. One is dealt with in the Act of 1921. The right to select that interest as the basis for the imposition of a separate tax is recognized in Oliver Iron Mining Co vs. Lord et al., supra. Although the tax under the Act of 1921, is an occupation tax, the same is levied because of the operator's relation to the land, and in the last analysis, because of his interest therein. By the Act of 1923, the entire remaining interest is made the basis for the tax there imposed. In cases where there is but one ownership, the tax is imposed under the Act of 1921.

10. In a case where it is clearly made out that a law is unconstitutional, the Court should not hesitate to so declare. If such proof shall not be made, or if the matter is left in doubt, the law should stand. Invoking now and applying some of the basic rules hereinbefore set forth,—this Court must be slow to hold a State law invalid; under the evidence here, such a holding is not "imperatively necessary;" in enacting the particular law here involved, the State legislature had "a very wide range of discretionary power;" the classification adopted by the legislature "is a reasonable one and such as essential differences suggest;" such classification does not indicate any "clear and hostile discrimination between particular

[fol. 92] persons and classes;" it cannot be said that the classification adopted was not "suggested by * * * characteristics which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto the ordinary methods of taxation." It is not clearly shown that Chapter 226, supra, is in violation of either the State or the Federal constitution. The Act, therefore, should be held valid. The justice or injustice of the tax, and the question of where it should ultimately fall, and by whom ultimately it should be paid, are not for determination here and no comment is made thereon.

11. In a sense it may be said that the two taxes herein referred to are together imposed upon the mining operation as a whole, as the same affects any particular description of land. Undoubtedly, the Legislature of 1923, had something like this in mind. This would not require that the two taxes should be of the same kind. The character of the tax depends upon the legislative intent as expressed in the law. Under either Act, the tax might have been laid as an occupation tax, or as an income tax, or as a tax on the land, as might at the same time be applicable and valid and best give effect to the legislative will. Under the Act of 1921, the convenient and practicable form to employ was that of an occupation tax. Taken literally, the Act of 1923, provides for a tax on royalties. Certain non-residents of the State of Minnesota, urge that as to them, the situs of the royalty is never within the jurisdiction of that State, and, therefore, that the royalty cannot be taxed therein. Shaffer vs. Carter, 252 U. S. 37, 55, is opposed to this view and as against the objection referred to, if the Act were construed as providing for a direct tax on royalties, it would stand. Looking through the Act, however, to the real substance thereof, it is essentially a tax upon the interest in the land owned by the person by whom the tax should be paid and it is so considered in the determination of this case. The amount of the royalty is the basis to be used in the computation of the tax.

Pollock vs. Farmers' Loan & Trust Co. 157 U. S. 429, 581.

12. The question of what royalty receipts shall be included in the computation of the tax for the year 1923, is not decided. It is assumed that in the administration of the law, the Act in question will be so construed as not to offend against any constitutional provision.

From the foregoing, if correct, it follows that the relief prayed for should be denied.

Let decree in the above entitled suit be prepared in accordance herewith, and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixth days after the entry of such decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge of United States District Court.

[fol. 93] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION—Jan. 15, 1925

The memorandum filed herewith in the case of Royal Mineral Association, et al. v. Samuel Lord, et al. is adopted and made a part of this case.

In addition, while technically the contract of the Sargent Land Company, on its face, may be one of sale, and amounts payable from time to time thereunder may be deferred installments of what is called the purchase price, yet, having in mind the purpose and object of Chapter 226, Laws of Minnesota, 1923, there is, in substance, no real distinction which can be drawn between the contract and the ordinary so-called mining lease. Both accomplish the same purpose in much the same way, and it would not do to hold that the tax under the law applies in one case and does not apply in the other.

Let decree in the above entitled suit be prepared in accordance therewith, and let such decree provide that the temporary restraining order in said suit heretofore issued be and remain in full force and effect for the period of sixty days after the entry of such decree, for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[fol. 94] [File endorsement omitted.]

[fol. 95] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed Jan. 15, 1925

This cause came duly on to be heard, and was argued by counsel, and, upon consideration, thereof, it is ordered, adjudged and decreed that the bill of complaint herein be and the same hereby is dismissed, with costs to the defendants to be taxed.

It is further ordered that the temporary restraining order heretofore issued in this suit be and remain in full force and effect for the period of sixty days after the entry of this decree for the purpose of allowing an appeal to be taken therefrom.

Dated January 15, 1925.

Wm. A. Cant, Judge United States District Court.

[File endorsement omitted.]

[fol. 96] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed March 11, 1925

Now come Helen P. Bardwell, Harriot P. Ayer and Alice P. Forsman, plaintiffs herein, by their counsel, and feeling themselves aggrieved by the final decree made and entered in the above entitled cause on the 15th day of January, 1925, do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error which are filed herewith. And they pray that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States. And your petitioners further pray that the court do order that the temporary restraining order heretofore issued in this suit be and remain in full force and effect pending the appeal herein and until the final determination of this cause.

John R. Van Derlip, Fred B. Snyder, Edward C. Gale, Solicitors for Plaintiffs and Appellants Helen P. Bardwell, Harriot P. Ayer, and Alice P. Forsman. John G. Milburn, 54 Wall Street, New York City, N. Y., of Counsel.

Dated March 10, 1925.

[fol. 97] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—March 11, 1925

The foregoing petition is granted and the plaintiffs' appeal allowed; and, the plaintiffs having given bond as required by this court, it is ordered that the temporary restraining order heretofore issued in this suit be and remain in full force and effect pending said appeal and until the final determination of this cause.

Wm. A. Cant, Judge of the United States District Court.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

(1) The court erred in holding that Chapter 226 of the laws of Minnesota for 1923 does not violate section 1 of Article 9 of the Constitution of Minnesota, requiring that taxes shall be uniform upon the same class of subjects.

(2) The court erred in holding that said Chapter 226 does not violate sections 33 and 34 of Article 4 of the Constitution of Minnesota, prohibiting special legislation.

(3) The court erred in holding that said Chapter 226 does not violate section 7 of Article 1 of the Constitution of Minnesota, providing that no person shall be deprived of property without due process of law.

(4) The court erred in holding that said Chapter 226 does not violate section 13 of Article 1 of the Constitution of Minnesota, providing that private property shall not be taken for public use without just compensation.

(5) The court erred in holding that said Chapter 226 does not violate the Fourteenth Amendment to the Constitution of the United States, securing to all persons within the State of Minnesota the equal protection of the laws.

(6) The court erred in holding that said Chapter 226 is not in violation of the provision of the Fourteenth Amendment to the Constitution of the United States, that no state shall deprive any person of propery without due process of law.

[fol. 99] (7) The court erred in holding that said Chapter 226 is a valid and enforcible law.

(8) The court erred in holding that the tax sought to be established by said Chapter 226 is lawful and enforcible.

(9) The court erred in holding that the tax imposed by said Chapter 226 upon "royalties" is a valid tax upon the interest in the land of the person or persons entitled to receive such royalties for permission to explore, mine, take out and remove ore from land in the State of Minnesota.

(10) The court erred in holding that the classification for taxation of such "royalties" separately from other rents derived from land in the State of Minnesota is reasonable and valid.

(11) The court erred in holding that the classification for taxation of such "royalties" separately from other moneys belonging to the taxpayer is reasonable or valid.

(12) The court erred in holding that said Chapter 226 is uniform in its tax imposition and burden upon the same class of subjects.

(13) The court erred in holding that the depletion of the value of mineral lands by removal of ores therefrom constitutes a lawful basis for discrimination against, or separate classification of, such property in respect of taxation.

(14) The court erred in holding that the depletion of the value of mineral lands by the removal of ores therefrom, constitutes a valid basis for the taxation of royalties paid or received for permission to explore, mine, take out and remove ore from such lands.

(15) The court erred in holding that the fact that practically all of the iron ore mined in Minnesota is transported beyond the limits of the State, constitutes a lawful basis for the separate classification for taxation of royalties paid or received for permission to explore, mine, take out and remove such ore from land in Minnesota, or for taxation of any interest in such land.

(16) The court erred in holding that instalments of purchase money received by a vendor for the sale of iron ore in place in lands in Minnesota are "royalties" within the purview of said Chapter 226, and taxable thereunder, even if said law be valid and enforcible as respects royalties paid and received for permission to explore, mine, take out and remove ore from land in Minnesota.

(17) The court erred in denying to the plaintiffs the relief sought by them in this action, and every part thereof, and in entering a decree dismissing the bill of complaint.

Respectfully submitted, John R. Van Derlip, Fred B. Snyder, Edward C. Gale, Solicitors for Plaintiffs Above Named, Minneapolis, Minnesota. John G. Milburn, Counsel, 54 Wall Street, New York City, N. Y.

Dated March 10, 1925.

[fol. 100] [File endorsement omitted.]

[fol. 101] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE APPEAL—Filed April 27, 1925

Whereas, the above entitled action has been brought by plaintiffs above named for the primary purpose of determining the constitutional validity of Chapter 226 of the Laws of Minnesota for 1923 and is now pending in the Supreme Court of the United States on appeal from the decree entered in said case adverse to plaintiffs, and

Whereas, certain other persons, to-wit: James E. Sherman, Alton T. Roberts, J. M. Richardson Lyeth, Carroll Paul, and Frederick P. Burrall, as Trustees under the will of John M. Longyear deceased; and Mary B. Longyear, as plaintiffs, have brought suit against Samuel Lord, James G. Armson and Odin Halden, as constituting the Minnesota Tax Commission; Clifford L. Hilton, as Attorney General of Minnesota; Raymond P. Chase, as State Auditor of Minnesota, and Henry Rines, as State Treasurer of Minnesota, defendants, for the same purpose of determining the constitutional validity of said Legislative Act, which said last named suit is now pending in the District Court of the United States, District of Minnesota, Fifth Division, and in which said suit plaintiffs and defendants are represented and appear by the same attorneys, respectively, as rep-

resent plaintiffs and defendants, respectively, in the above entitled action, and

[fol. 102] Whereas, a stipulation has been entered into in said suit brought by James E. Sherman and others consenting and stipulating that the trial of said last named suit shall be postponed until final judgment shall have been made and entered in said action brought by Helen P. Bardwell and others and that said judgment, when entered, shall be final and conclusive upon all parties in said suit brought by James E. Sherman and others as respects the constitutional validity of said Legislative Act as fully and with the same effect as if said judgment were rendered immediately in said last named suit;

Now therefore, it is hereby stipulated by and between the respective parties to the above entitled action that any and all issues raised by the pleadings in said suit brought by James E. Sherman and others may be argued and submitted to said United States Supreme Court upon appeal herein and particularly any and all issues arising from or based upon the fact that plaintiffs, and each of them, in said suit brought by James E. Sherman and others were and are non-residents of the State of Minnesota, and that this stipulation shall be included in and form a part of the transcript of record to be filed in said Court upon said appeal.

Dated April 23, 1925.

John R. Van Derlip, Fred B. Snyder, Edward C. Gale, Solicitors for Plaintiffs. L. R. McNally, Attorney and Solicitor for Sargent Land Co. Clifford L. Hilton, Attorney General; G. A. Youngquist, Attorney General; Patrick J. Ryan, Solicitors for Defendants Lord, Armson, Halden, Hilton, Chase and Rines. John G. Milburn, 54 Wall Street, New York City, N. Y., of Counsel.

[fols. 103-105] CITATION—In usual form showing service on Jno. O'Brien et al.; filed March 14, 1925; omitted in printing

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[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated, by and between the respective parties in the above entitled action, that the transcript of the record to be prepared and filed in the Supreme Court of the United States upon the appeal of the above named plaintiffs, Helen P. Bardwell, et al., shall contain the following:

(1) The bill of complaint including exhibits 1, 2, 3 and 4.
(2) The answer of the defendant Sargent Land Company.
(3) The answer of the defendants Samuel Lord, James G. Armson, Odin Halden, Clifford L. Hilton, Raymond P. Chase and Henry Rines.
(4) Restraining order, dated January 7th, 1924.
(5) Stipulation of parties continuing restraining orders in force, and waiving the procuring of interlocutory injunction, the hearing and determination of the suit by three judges, and that the suit may be heard and determined on its merits by Hon. William A. Cant.
(6) Order pursuant to preceding stipulation.
(7) Agreed statement of facts.
(8) Opinion of court and order for decree.
(9) Supplementary opinion and order in the above entitled action.
(10) Decree.
(11) Petition for appeal and order allowing same and continuing restraining order.
[fol. 107] (12) Plaintiffs' assignments of error.
(13) Citation.

That other stipulations and orders made in the action are not deemed essential for the proper hearing of this appeal.

Dated April 16, 1925.

John R. Van Derlip, Fred B. Snyder, Edward C. Gale, Attorneys and Solicitors for Plaintiffs. L. P. McNally, Attorney and Solicitor for Sargent Land Company. Clifford L. Hilton, Attorney General; G. A. Youngquist, Assistant Attorney General; Patrick J. Ryan, Solicitors for Defendants Lord, Armson, Halden, Hilton, Chase, and Rines.

[fol. 108] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Joel M. Dickey, Clerk of said District Court, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of 108 pages, numbered consecutively to 108, inclusive, is a true and complete transcript of all the records, process, pleadings, orders and final judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said Court and in accordance with a stipulation for such transcript, a copy of which is included within said paging; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with admission of service thereof.

In witness whereof, I have hereunto set my hand as the Clerk aforesaid and affixed the seal of said Court at Duluth, in the District of Minnesota, this 29th day of April, A. D. 1925.

Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy. (Seal of the U. S. Dist. Court, Dist. of Minnesota, Fifth Division.)

Endorsed on cover: File No. 31,185. Minnesota D. C. U. S. Term No. 471. Helen P. Bardwell, Harriot P. Ayer, and Alice P. Forsman, appellants, vs. Sargent Land Company, Samuel Lord, James G. Armson, et al. Filed May 14, 1925. File No. 31,185.